

MONTANA LEGISLATIVE HISTORY

Chapter 352 19 93

Bill H 283 S _____ Original bill & history ✓ C

H. Committee on Taxation

Hearing Date(s) Jan 22 ✓ C

Feb 03 ✓ C

_____ C

_____ C

Date Out Feb 03 ✓ C

S. Committee on Taxation

Hearing Date(s) Feb 12 ✓ C

Mar 23 ✓ C

_____ C

_____ C

Mar 23 ✓ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

HB 282 INTRODUCED BY WHALEN, ET AL.
 GENERALLY REVISE LAW RELATING TO JOINT AND SEVERAL LIABILITY IN
 CIVIL CASES

1/19 INTRODUCED
 1/20 REFERRED TO JUDICIARY
 1/20 FIRST READING
 1/29 HEARING
 2/05 Tabled in COMMITTEE

HB 283 INTRODUCED BY ELLIOTT, ET AL.
 GENERALLY REVISE CIGARETTE TAX LAWS
 BY REQUEST OF DEPARTMENT OF REVENUE

1/19 INTRODUCED
 1/20 REFERRED TO TAXATION
 1/20 FIRST READING
 1/20 FISCAL NOTE REQUESTED
 1/26 FISCAL NOTE RECEIVED
 1/26 FISCAL NOTE PRINTED
 1/27 HEARING
 2/04 COMMITTEE REPORT—BILL PASSED AS AMENDED
 2/06 2ND READING PASSED 75 23
 2/09 3RD READING PASSED 74 24
 TRANSMITTED TO SENATE
 2/11 FIRST READING
 2/11 REFERRED TO TAXATION
 2/17 HEARING
 3/24 COMMITTEE REPORT—BILL CONCURRED AS AMENDED
 3/26 2ND READING CONCURRED AS AMENDED 27 10
 3/27 3RD READING CONCURRED 36 13
 RETURNED TO HOUSE WITH AMENDMENTS
 4/01 2ND READING AMENDMENTS CONCURRED 83 11
 4/02 3RD READING AMENDMENTS CONCURRED 83 15
 4/07 SIGNED BY SPEAKER
 4/08 SIGNED BY PRESIDENT
 4/13 TRANSMITTED TO GOVERNOR
 4/16 SIGNED BY GOVERNOR
 CHAPTER NUMBER 352
 EFFECTIVE DATE: 04/16/93—SECTIONS 3-5 & 11-15
 EFFECTIVE DATE: 07/01/93—SECTIONS 1, 2 & 6-10

HB 284 INTRODUCED BY COBB, ET AL.
 EXTEND STATE-INSURED LOAN PROGRAM FOR SCHOOL BONDS
 BY REQUEST OF OFFICE OF PUBLIC INSTRUCTION

1/19 INTRODUCED
 1/20 REFERRED TO EDUCATION & CULTURAL RESOURCES
 1/20 FIRST READING
 1/20 FISCAL NOTE REQUESTED
 1/25 FISCAL NOTE RECEIVED
 1/28 FISCAL NOTE PRINTED
 1/29 HEARING
 2/03 COMMITTEE REPORT—BILL PASSED
 2/11 2ND READING DO PASS AS AMENDED 46 51
 MOTION FAILED
 2/11 SEGREGATED FROM COMMITTEE OF
 THE WHOLE REPORT 88 8
 2/11 TAKEN FROM 2ND READING AND
 REREFERRED TO APPROPRIATIONS

HOUSE BILL NO. 283

INTRODUCED BY ELLIOTT, STANG, WILSON, FORRESTER
BY REQUEST OF THE DEPARTMENT OF REVENUE

IN THE HOUSE

JANUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
FEBRUARY 4, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 5, 1993	PRINTING REPORT.
FEBRUARY 6, 1993	SECOND READING, DO PASS.
FEBRUARY 8, 1993	ENGROSSING REPORT.
FEBRUARY 9, 1993	THIRD READING, PASSED. AYES, 74; NOES, 24.
FEBRUARY 10, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON TAXATION.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN AS AMENDED.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 36; NOES, 13.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	SECOND READING, AMENDMENTS CONCURRED IN.
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APRIL 2, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 283
2 INTRODUCED BY [Signature] Wilson
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4 [Signature]

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
6 CIGARETTE TAX LAWS; APPLYING THE CIGARETTE SALES TAX TO ALL
7 USE AND CONSUMPTION OF CIGARETTES ON AN INDIAN RESERVATION;
8 PROVIDING AN EXCEPTION TO THE TAX FOR USE AND CONSUMPTION OF
9 CIGARETTES BY A MEMBER OF AN INDIAN TRIBE ON AN INDIAN
10 RESERVATION; PROVIDING A REFUND OR CREDIT TO A WHOLESALER
11 FOR TAXES PAID ON CIGARETTES SOLD TO A TRIBAL MEMBER;
12 REQUIRING THE DEPARTMENT OF REVENUE TO SHARE REVENUE WITH A
13 TRIBAL GOVERNMENT THAT HAS ENACTED A CIGARETTE TAX IDENTICAL
14 TO THE STATE TAX; PROVIDING A CIVIL PENALTY FOR THE
15 UNAUTHORIZED POSSESSION OR TRANSPORTATION OF UNSTAMPED
16 CIGARETTES; PROVIDING FOR SEARCH, SEIZURE, AND FORFEITURE OF
17 UNSTAMPED CIGARETTES; PROVIDING A STATUTORY APPROPRIATION;
18 AMENDING SECTIONS 16-11-111, 16-11-131, 16-11-147, AND
19 17-7-502, MCA; AND PROVIDING EFFECTIVE DATES AND AN
20 APPLICABILITY DATE."

21
22 WHEREAS, the Legislature proposes to eliminate unfair
23 competitive business advantages now enjoyed by retailers
24 operating on Indian reservations in direct competition with
25 businesses operating off the reservations by providing that

1 cigarettes sold on an Indian reservation have a Montana
2 cigarette tax stamp affixed to the cigarette package or
3 container that requires purchasers who are not members of
4 the tribe residing on the reservation to pay the state
5 cigarette tax; and

6 WHEREAS, the Legislature also recognizes that Indian
7 tribes in Montana view as unlawful certain state taxes being
8 assessed against the tribes and tribal members on the
9 reservation; and

10 WHEREAS, although the Legislature proposes to exercise
11 its authority to seek assistance from tribal governments in
12 collecting cigarette taxes from nonmembers on the
13 reservation, the Legislature also recognizes the need for
14 negotiation with Montana Indian tribes in order to avoid
15 dual taxation and to develop a comprehensive resolution of
16 the cigarette taxation issues affecting both the state and
17 the tribes.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20 NEW SECTION. **Section 1. Definitions.** As used in
21 16-11-111 and [sections 1 through 7], the following
22 definitions apply:

23 (1) "Indian reservation" means lands declared to be a
24 reservation for an Indian tribe or tribes:

25 (a) by a treaty between the tribe and a territorial

government, a state government, or the United States;

(b) through an act of the United States congress; or

(c) through an executive order of the United States.

(2) "Quota" means the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made.

NEW SECTION. Section 2. Stamps affixed on cigarettes
-- exception. Except for cigarettes sold on a military reservation, cigarettes sold in Montana must have a Montana cigarette tax stamp affixed prior to sale.

NEW SECTION. Section 3. Cooperative agreement --
revenue sharing of cigarette taxes with tribal government.
(1) In order to prevent the possibility of dual taxation of cigarettes purchased on an Indian reservation, the department and an Indian tribe may enter into a cooperative agreement. The agreement must provide that:

(a) under the conditions specified in this section, the state and the tribe will cooperate to collect only one tax that is at the same level as the tax imposed outside the boundaries of the Indian reservation and will share the revenue as provided in this section; and

(b) the state and the tribe are not forfeiting any legal rights to apply their respective taxes by entering into an agreement, except as specifically provided for in

the agreement.

(2) If a tribal government in the state adopts an ordinance imposing a cigarette tax on cigarettes sold on the Indian reservation and requires that the tax be paid under identical conditions as those imposed by the state, the department shall collect the tax for the tribe. The consumer is not required to pay both the state tax and the tribal tax but shall pay only one tax to the state in an amount equal to the tax paid on cigarettes pursuant to 16-11-111.

(3) After deducting administrative expenses of not more than 5% of the amount of the tax determined in subsection (2), the department shall on a monthly basis distribute the remaining amount to the tribal government.

NEW SECTION. Section 4. Tribal cigarette administration account. (1) There is a special revenue account called the tribal cigarette administration account.

(2) The money received for administrative expenses and deducted by the department under [section 3] must be deposited in the tribal cigarette administration account.

(3) Money in the tribal cigarette administration account is statutorily appropriated, as provided in 17-7-502, to the department and may be expended only for administering collection of the cigarette tax.

NEW SECTION. Section 5. Tribal cigarette tax account.
(1) There is a special revenue account called the tribal

1 cigarette tax account.

2 (2) The tax collected under [section 3], less the
3 administrative expenses deducted under [section 3], must be
4 deposited in the tribal cigarette tax account.

5 (3) The money in the tribal cigarette tax account is
6 statutorily appropriated, as provided in 17-7-502, to the
7 department and must be disbursed on a monthly basis to the
8 tribe as provided for in the agreement entered into pursuant
9 to [section 3].

10 NEW SECTION. **Section 6.** Possession or unauthorized
11 transportation of unstamped cigarettes -- civil penalty. (1)
12 In lieu of the criminal penalties provided in 16-11-131,
13 16-11-146, and 16-11-148, the department may assess a person
14 who unlawfully possesses or transports unstamped cigarettes
15 a civil penalty of \$250 for the first full or partial pack
16 of unstamped cigarettes and \$10 for each additional full or
17 partial pack of unstamped cigarettes.

18 (2) The department shall determine the amount of the
19 penalty provided in subsection (1) and notify the person who
20 unlawfully possessed or transported the unstamped cigarettes
21 of the amount. The penalty is due and payable on the date of
22 the notice. A penalty not paid when due is subject to
23 interest at the rate of 10% a year.

24 NEW SECTION. **Section 7.** Sale or retention of forfeited
25 property -- use of sale proceeds. (1) When property is

1 forfeited under 16-11-147, the department may:

2 (a) retain the property or any part of the property for
3 official use or, upon application by a law enforcement
4 agency of this state, another state, the District of
5 Columbia, or the United States, for the exclusive use of
6 enforcing the provisions of 16-11-111, 16-11-131, 16-11-147,
7 and [sections 1 through 7] or the laws of another state, the
8 District of Columbia, or the United States; or

9 (b) after advertising, sell the property at public
10 auction to the highest bidder. The department, before
11 delivering a seized item, shall first require stamps to be
12 affixed.

13 (2) The proceeds of a sale under this section must be
14 applied first to paying the expenses of any investigation
15 leading to the seizure of the items, including costs
16 incurred by a local, state, or federal law enforcement
17 agency, and of the forfeiture and sale proceedings,
18 including the expenses of seizure, maintenance, custody, and
19 court costs. The balance of the proceeds must be deposited
20 in the state general fund.

21 **Section 8.** Section 16-11-111, MCA, is amended to read:

22 "16-11-111. (Temporary) Cigarette sales tax --
23 exemption for sale to tribal member. There (1) A tax on the
24 purchase of cigarettes for consumption, use, or any purpose
25 other than resale in the regular course of business is

levied, imposed, and assessed and there must be collected precollected by the wholesaler and paid to the state of Montana upon cigarettes sold or possessed in this state an excise tax of. The tax is 19.26 cents on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

(2) The tax imposed in subsection (1) does not apply to a cigarette sale if the sale is made:

(a) by a retailer whose establishment is located within the boundaries of an Indian reservation located in Montana; and

(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation where the retail establishment is located.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file

a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a credit or refund. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferrable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each

1 fiscal year, using the most recent census data available
2 from the bureau of Indian affairs or populations determined
3 in a cooperative agreement with the tribe or tribes of the
4 Indian reservation.

5 16-11-111. (Effective August 15, 1993) Cigarette sales
6 tax -- exemption for sale to tribal member. There (1) A tax
7 on the purchase of cigarettes for consumption, use, or any
8 purpose other than resale in the regular course of business
9 is levied, imposed, and assessed and there must be collected
10 precollected by the wholesaler and paid to the state of
11 Montana upon cigarettes sold or possessed in this state an
12 excise tax of. The tax is 18 cents on each package
13 containing 20 cigarettes and, when packages contain more or
14 less than 20 cigarettes, a tax on each cigarette equal to
15 1/20th the tax on a package containing 20 cigarettes.

16 (2) The tax imposed in subsection (1) does not apply to
17 a cigarette sale if the sale is made:

18 (a) by a retailer whose establishment is located within
19 the boundaries of an Indian reservation located in Montana;
20 and

21 (b) to an enrolled member of the federally recognized
22 Indian tribe residing on the Indian reservation where the
23 retail establishment is located.

24 (3) Subject to the refund or credit provided in
25 subsection (4), the tax must be precollected on all

1 cigarettes entering a Montana Indian reservation.

2 (4) Pursuant to the procedure provided in subsection
3 (5), a wholesaler making a sale of cigarettes to a retailer
4 within the boundaries of a Montana Indian reservation may
5 apply to the department for a refund or credit for taxes
6 precollected on cigarettes sold by the retailer to a member
7 of the federally recognized Indian tribe or tribes on whose
8 reservation the sale is made. A wholesaler who does not file
9 a claim within 1 year of the shipment date forfeits the
10 refund or credit.

11 (5) The distribution of tax-free cigarettes to a tribal
12 member must be implemented through a system of preapproved
13 wholesaler shipments. A licensed Montana wholesaler shall
14 contact the department for approval prior to the shipment of
15 the untaxed cigarettes. The department may authorize sales
16 based on whether the quota has been met. If authorized as a
17 tax-exempt sale, the wholesaler, upon providing proof of
18 order and delivery to a retailer within the boundaries of a
19 Montana Indian reservation selling cigarettes to members of
20 a federally recognized tribe or tribes of that reservation,
21 must be given a credit or refund. Once the quota has been
22 filled, the department shall immediately notify all affected
23 wholesalers that further sales on that reservation must be
24 taxed and that a claim for a refund or credit will not be
25 honored for the remainder of the quota period. Quota

1 allocations are not transferrable between quota periods or
2 between reservations.

3 (6) The total amount of refunds or credits allowed by
4 the department to all wholesalers claiming the refund or
5 credit under subsection (4) for any month may not exceed an
6 amount that is equal to the tax due on the quota allocation.
7 The department shall determine the amount of refunds or
8 credits for each Indian reservation at the beginning of each
9 fiscal year, using the most recent census data available
10 from the bureau of Indian affairs or populations determined
11 in a cooperative agreement with the tribe or tribes of the
12 Indian reservation."

13 **Section 9.** Section 16-11-131, MCA, is amended to read:

14 **"16-11-131. Transporting cigarettes without insignia a**
15 **misdemeanor -- invoices and delivery tickets required --**
16 **stop and inspection authorized. (1) It shall-be is unlawful**
17 **for any a person to transport into, receive, carry, or move**
18 **from place to place within this state, except in the course**
19 **of interstate commerce, any cigarettes which that do not**
20 **bear the insignia (stamps) required by this part, except for**
21 **a person specifically exempted in 16-11-132(2).**

22 **(2) (a) When transporting unstamped cigarettes, a**
23 **person shall possess invoices or delivery tickets for the**
24 **cigarettes that show the name and address of the consignor**
25 **or seller, the name of the consignee or purchaser, and the**

1 quantity and brands of the cigarettes being transported. If
2 the cigarettes are consigned to or purchased by a person in
3 this state, the consignee or purchaser must be authorized by
4 16-11-132 to possess unstamped cigarettes in this state.

5 (b) The cigarettes transported are subject to seizure,
6 forfeiture, and sale as provided in 16-11-141, 16-11-147,
7 [section 7], and this section if:

8 (i) there are no invoices or delivery tickets;

9 (ii) the name or address of the consignee or purchaser
10 is falsified; or

11 (iii) the consignee or purchaser is not authorized to
12 possess unstamped cigarettes.

13 (3) Transportation of cigarettes from a point outside
14 the state to a point in another state is not a violation of
15 this section if the person transporting the unstamped
16 cigarettes possesses adequate invoices or delivery tickets
17 that give the name and address of the out-of-state consignor
18 or seller and the out-of-state consignee or purchaser.

19 (4) If the department, its authorized agent, or a peace
20 officer of the state has knowledge or reasonable grounds to
21 believe that a vehicle is transporting cigarettes in
22 violation of this section, the department, its agent, or a
23 peace officer may stop and inspect the vehicle.

24 (5) Any A person violating the provisions of this
25 section is guilty of a misdemeanor and-shall-be-punished-as

hereinafter-provided."

Section 10. Section 16-11-147, MCA, is amended to read:

"16-11-147. Seizure and forfeiture of unlawful cigarettes. (1) Any A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarettes are being unlawfully transported, together with the cigarettes and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department, its duly authorized agent, any a sheriff or deputy, or other peace officer and is subject to forfeiture in the manner provided in subsection (2).

(2) Upon the seizure of any cigarettes and within 2 days thereafter of the seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department. ~~The person from whom the seizure was made or any other person claiming an interest in the property seized may apply for its return as provided in 46-5-305, 46-5-311, and 46-5-312.~~

(3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or

right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

(4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."

Section 11. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105; 2-18-812; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 13-37-304; 15-1-111; 15-23-706; 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-65-121; 15-70-101; 16-1-404; 16-1-410; 16-1-411; [section 4]; [section 5]; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-409; 17-7-304; 19-5-404; 19-6-709; 19-8-504; 19-9-702; 19-9-1007; 19-10-205; 19-10-305; 19-10-506; 19-11-512; 19-11-513; 19-11-606; 19-12-301; 19-13-604; 19-15-101; 20-4-109; 20-6-406; 20-8-111; 20-9-361; 20-26-1503; 22-3-811; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631; 23-7-301; 23-7-402; 27-12-206; 37-43-204; 37-51-501; 39-71-2504; 44-12-206; 44-13-102; 53-6-150; 53-24-206; 61-5-121; 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-11-310; 82-11-136; 82-11-161; 85-1-220; 90-3-301; 90-4-215; 90-6-331; 90-7-220; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing, paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued pursuant to the laws of Montana. Agencies that have entered into agreements

authorized by the laws of Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for supplemental benefit; and pursuant to sec. 18, Ch. 748, L. 1991, the inclusion of 22-3-811 terminates June 30, 1993.)"

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 7] are intended to be codified as an integral part of Title 16, chapter 11, part 1, and the provisions of Title 16, chapter 11, part 1, apply to [sections 1 through 7].

NEW SECTION. Section 13. Coordination instruction. If ____ Bill No. ____ [LC 145] is passed and approved and if it amends the State-Tribal Cooperative Agreements Act to specifically include the assessment and collection of a tax or license or permit fee and provides for revenue sharing, then [sections 3 through 5 of this act] are void.

NEW SECTION. Section 14. Effective dates. (1) [Sections 3 through 5 and 11 through 15] are effective on passage and approval.

(2) [Sections 1, 2, and 6 through 10] are effective

1 July 1, 1993.

2 NEW SECTION. **Section 15. Applicability.** [Sections 1,
3 2, and 6 through 10] apply to cigarette sales made by a
4 wholesaler after June 30, 1993.

-End-

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0283, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the cigarette tax laws; applying the cigarette sales tax to all use and consumption of cigarettes on an Indian reservation; providing an exception to the tax for use and consumption of cigarettes by a member of an Indian tribe on an Indian reservation; providing a refund or credit to a wholesaler for taxes paid on cigarettes sold to a tribal member; requiring the Department of Revenue to share revenue with a tribal government that has enacted a cigarette tax identical to the state tax; providing a civil penalty for unauthorized possession or transportation of unstamped cigarettes; providing for search seizure, and forfeiture of unstamped cigarettes; providing a statutory appropriation; and providing effective dates and an applicability date.

ASSUMPTIONS:

1. Under this bill, all cigarettes sold in Montana except those sold on a military reservation will be stamped.
2. Under this bill, unless a quota agreement has been made with the tribal government, untaxed cigarettes will be supplied to each reservation up to a quota for that reservation. The quota of untaxed cigarettes for each reservation is the national per capita consumption of cigarettes times the number of enrolled tribal members living on that reservation.
3. Tribes residing on four Indian reservations have already reached a quota agreement concerning untaxed cigarettes with the Department of Revenue. They reside on the Crow Reservation, the Fort Peck Reservation, the Rocky Boys Reservation, and the Northern Cheyenne Reservation.
4. Unless agreements are made before July 1, 1993 the tribes residing on three Indian reservations will be impacted by the quota system of this proposal. They are the Blackfeet Reservation, the Flathead Reservation, and the Fort Belknap Reservation.
5. Under this bill there would be approximately 4,000,000 additional packs of taxed cigarettes sold in Montana.
6. The tax on a packages of cigarettes is 18 cents with an effective rate of 17.4863 cents per package.

FISCAL IMPACT:

Revenues:

The opportunity remains open for the tribes residing on the Flathead, Blackfeet, and Fort Belknap Reservations to negotiate an agreement between now and the effective date of Section 6 of this legislation. Assuming that the State of Montana and the tribes from the three Indian reservations do not enter into an agreement before that effective date and the state imposes a quota allocation, the potential revenue recovery is estimated to be approximately \$700,000.

Since there are no cooperative agreements with any Indian tribe imposing a cigarette tax identical to the state tax which would allow revenue sharing of cigarette taxes, the Department of Revenue cannot make any revenue estimates on this issue.

Dave Lewis 1-25-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Jim Elliott 1/26/93
JIM ELLIOTT, PRIMARY SPONSOR DATE

Fiscal Note for HB0283, as introduced

HB 283

Committee Business Summary continued:

Executive Action: HB 92 Do Pass As Amended
HB 186 Do Pass
HB 250 Do Pass As Amended
HB 254 Do Pass As Amended
HB 327 Do Pass As Amended
SB 10 Be Concurred In As
Amended
HB 297 Do Pass
HB 312 Do Pass

HEARING ON HOUSE BILL 283**Opening Statement by Sponsor:**

REP. JIM ELLIOTT, HD 51, Trout Creek, said HB 283 makes it possible for the state to collect taxes from non-Indians on Montana Indian reservations. Enrolled tribal members are exempt from any state tax while non-tribal members living on reservations are subject to all state taxes. Collection of those taxes has been a long-standing problem. Smoke shops on the reservations were allowed to get any amount of tax free cigarettes they wanted. In 1979, this was not a problem because only 4% of the Montana cigarette sales were tax free. By 1991, that figure had risen to 29% representing sales of 2.8 million cartons through the reservation smoke shops. The contention was that the bulk of the sales were to people from out-of-state. In 1990, the United States Supreme Court, with specific reference to smoke shops, ruled that states can collect taxes on cigarettes sold to non-Indians on Indian reservations. A 1991 bill instituted a quota system for cigarette sales on Montana reservations. It also contained a provision for a study of taxation issues on the reservations and encouraged the Department of Revenue (DOR) to enter into agreements with tribal governments in taxation issues. The quota provision was stripped in the Senate. The Department has, over the past two years, been conducting negotiations with all seven tribes in the state. Four of the tribes have agreed to the quota system and three others are in various negotiating stages at this time. HB 283 would impose quotas on the remaining three tribes, allow for continuing negotiations, and allow for the replacement of an imposed quota with a negotiated quota. This is not an Indian taxation issue, but rather a means of collecting taxes from non-Indians who are living on the reservations.

Proponents' Testimony:

Jeff Miller, Administrator, Income and Miscellaneous Tax Division, Department of Revenue (DOR), said the bill allows the state to regain control of the distribution of untaxed cigarettes on the state's reservations. If the tribe imposes a tax

identical to the state, there is a provision in the bill that allows the state to administer the tax for them. It will ensure the rights of the Indians to smoke tax free but it will allow the state to control the excess non-Indian sales. He reviewed the information contained in **EXHIBIT 1**, noting DOR has signed agreements with the Northern Cheyenne, Crow, Rocky Boy, and Fort Peck reservations.

He said it appears a significant numbers of cartons are being smuggled out of the state from the Flathead and Blackfoot reservations as well as being bought illegally by Montana residents. Exempt sales have dropped from 29% in 1990 and 1991 to 16% in 1992. A major enforcement activity occurred in November of 1991 with the cooperation of the Washington Department of Revenue, the Bureau of Alcohol, Tobacco and Firearms, the IRS, the Montana Department of Revenue, and numerous other law enforcement agencies, including tribal police. Search warrants were served simultaneously on 13 separate locations in Washington and Montana resulting in charges being filed against 24 individuals. Twenty-eight hundred separate counts were included in the indictment, including cigarette smuggling, money laundering totaling \$46 million, racketeering, conspiracy, and other related charges. The charges are still pending. Nine individuals in Montana were involved. The tribes had no involvement in the operation although a few have profited from the situation. Montana was the source of supply for a very large operation. The major drop in sales is a direct result of that action.

The bill contains a provision enabling the state to impose a quota if the tribes fail to arrive at a negotiated agreement. The quota would be based on tribal enrollment multiplied by national per capita consumption. There is also a provision for replacing the quota with the cooperative agreement, if and when such an agreement is negotiated with the tribes.

Mr. Miller submitted three sets of clarifying amendments to the Committee **EXHIBITS 2 and 3**.

SEN. BARRY STANG, SD 26, St. Regis, said he was going to introduce the bill in the Senate, but because the bill contains an appropriation, it had to originate in the House. **REP. STANG** has an off reservation retail business. He sells cigarettes in his store as do many other businessmen whom he also represents. He said years ago he sold a good number of cigarettes to people from Washington and Idaho due to the lower Montana tax. Off reservation businesses cigarette sales plummeted by over 50% after passage of the law allowing the sale of tax free cigarettes on the reservations. The bill is a fairness measure for those people who live and conduct business off, but adjacent to, the reservations. It allows tribal members to buy untaxed cigarettes

and keeps out-of-staters from buying carloads of cigarettes on the reservations. Non-tribal members will pay the tax whether they buy cigarettes on or off the reservation under the provisions of this bill.

Bill Stevens, Montana Food Distributors Association, said he previously owned a store in Boulder which was half the size of a store owned by a friend in St. Ignatius. The Boulder store, while smaller, sold 20,000 cartons of cigarettes a year compared to the larger store in St. Ignatius which sold only 2000 cartons a year. The reason for the difference was the proximity of the St. Ignatius store to the reservation. He said the bill restores fairness to cigarette retail sales and is long overdue and welcomed by his organization.

Opponents' Testimony:

Pat Smith, Staff Attorney, Salish and Kootenai Tribes, said he appeared as a hesitant opponent only because his tribe had not completed negotiations with the state. He presented a proposed amendment for the Committee's consideration which allows negotiation of the definition of "quota" EXHIBIT 4.

He said the tribe favors HB 92, which amends the State-Tribal Cooperative Agreements Act, and which would supersede HB 283 if it passes. The tribe is, for the first time, regulating the sale of cigarettes on the reservation. The tribal council has instituted an internal quota system, licensing regulations, and tribal identification cards. He said he had concerns about equitable distribution of cigarettes to tribal members re HB 283, but they have been somewhat alleviated after talking with DOR representatives and the sponsor of the bill.

Questions From Committee Members and Responses:

REP. TUNBY asked if DOR anticipates litigation over the arbitrary imposition of a quota in the absence of a negotiated agreement.

Mr. Miller said DOR does not anticipate any problem. The quota provision is based on a legal precedent established by the quota system that has been in force in Washington for the past 13 years. He pointed out the tribes have until July 1, 1993, to continue negotiations before the quota is set. They are free to continue negotiations after that time and to amend the quota based on a negotiated agreement.

REP. REAM asked about cigarette sales on military bases in the state.

Mr. Miller said enlisted and retired military are entitled to buy untaxed cigarettes on the base. They are restricted to four cartons per trip to the base exchange. He said total sales on the military reservations in 1992 (Malmstrom Air Force Base representing the majority of the sales) were 17,000 cartons as compared to 6.2 million on the Indian reservations in 1992.

REP. RANEY asked on what basis does DOR have the authority to impose arbitrary quota limits.

Mr. Miller replied DOR is trying to ensure the tribes have enough tax free cigarettes to meet the tribal needs. That is why the national average and enrolled tribal members numbers are used. The national per capita is 97 packs versus the statewide average of 83 packs. The quota is also based on all tribal members, not just adults over the age of 18. DOR feels this is a very generous allocation. In addition, case law supports the quota embargo. The United States Supreme Court held that methods such as the quota system are allowable as long as they do not unduly burden the congress on the reservation and do not impose requirements that are unique. He said this bill exactly mirrors the negotiated quota agreements already in place with the four other tribes. He repeated this is the same methodology that has been in force in Washington for 13 years without a challenge.

REP. Raney asked if the tribes are considering suing the state over the arbitrary imposition of non-negotiated quotas.

Mr. Smith said it depends on how the quota is implemented. If the tax allows for tribal members to receive an equitable share of tax free cigarettes there should be no problem. The only legal problem that could arise would be one of access, e.g., if the quota had been reached and the only cigarettes available to tribal members are taxed.

REP. ORR said both sets of amendments proposed by DOR reference revenue sharing. He asked if there are agreements with any other entities regarding revenue sharing and the cigarette tax.

Mr. Miller said the agreements in place with the four tribes do address revenue sharing re motor fuel taxes, but do not specify revenue sharing re cigarette sales. If the tribes were to impose a tax on cigarettes that mirrors the state tax, and it were administratively feasible, the amendments would allow the state to share revenue.

CHAIRMAN GILBERT said he would delay executive action on the bill until everyone concerned could review and agree on the proposed amendments.

Closing by Sponsor:

REP. ELLIOTT closed by saying the tribes, in 1991, asked for time to negotiate and thereby avoid imposition of a quota. Four of the tribes reached negotiated agreements in the past two years. The other three still have 5 months to complete their negotiations before arbitrary quotas are imposed. The figures contained in EXHIBIT 1 confirm that DOR is generous in their negotiations and also in their projected quota system. Case law gives the state authority to impose a quota and collect taxes. He said the state is not embargoing non-taxed cigarette sales to tribal members. The state is, however, attempting to restrict the unchecked flow of tax free cigarettes to non-tribal members.

HEARING ON HOUSE BILL 297Opening Statement by Sponsor:

REP. BEA MCCARTHY, HD 66, Anaconda, said HB 297 removes the capital gain exclusion from trust and estate taxable income to make Montana individual and trust taxable income statutes consistent. She said the bill simply makes Montana law consistent with federal law.

Proponents' Testimony:

Bob Turner, Chief, Income Tax Bureau, Miscellaneous and Income Tax Division, DOR, said the Legislature enacted the state trust and estate law in 1983. At that time, there was a 60% capital gains exclusion for individuals, estates, and trusts, at the federal level which was subsequently eliminated in 1986 by the Federal Tax Reform Act. At the Montana level, the exclusion was eliminated for individuals as Montana is tied to the federal adjusted gross income. It was not eliminated in Montana law for estates and trusts. This bill eliminates that inconsistency in Montana. He said this is basically a housekeeping measure. He pointed out the fiscal note says there is a minimal "negative" fiscal impact. It should be corrected to read a minimal "positive" fiscal impact.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor:

REP. MCCARTHY closed.

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL

DATE

1/27/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON	✓		
REP. ANDERSON	✓ (2:5)		✓
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT	✓		
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. MCCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

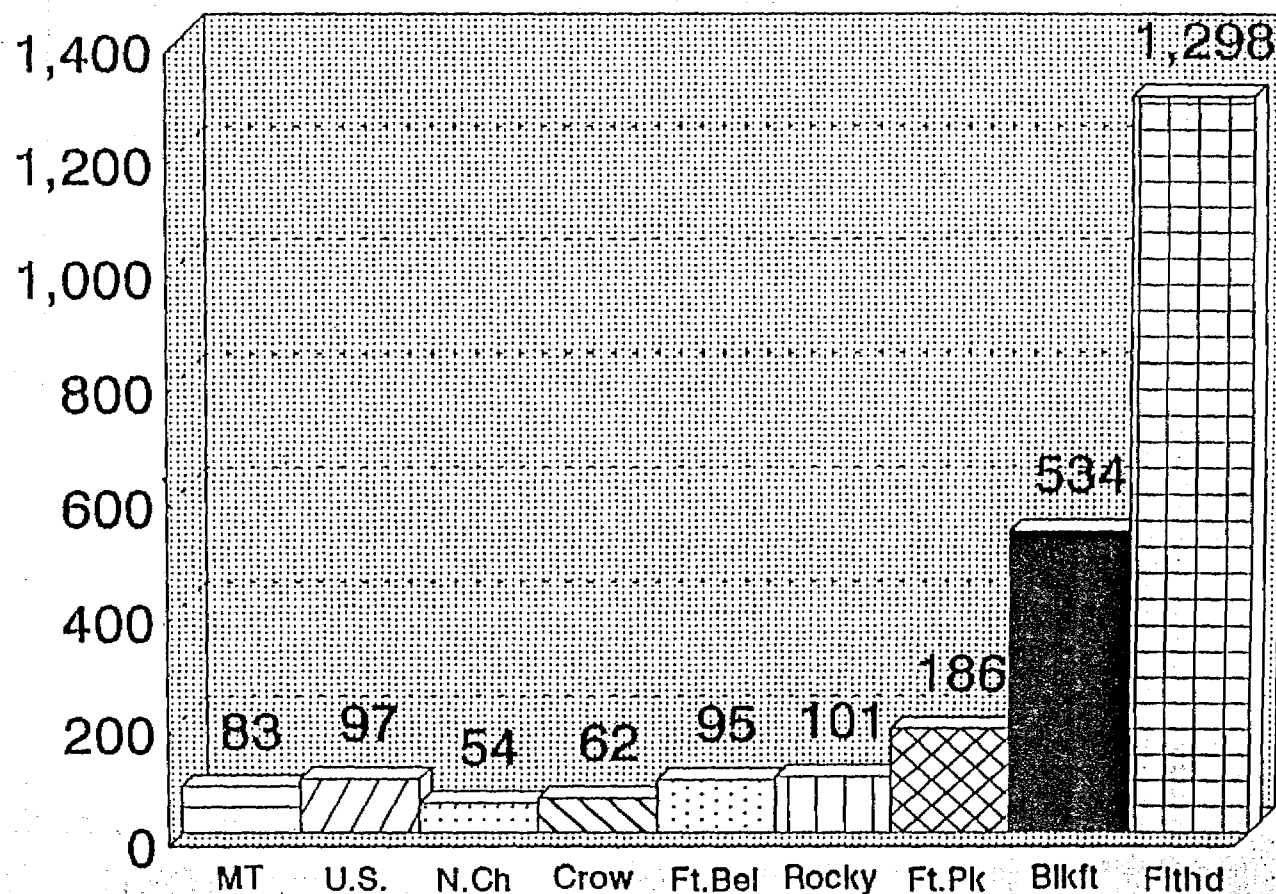
EXHIBIT
DATE 1/27/93
HB 763

Cigarette Sales Comparison

U.S. - Montana - Reservation

Total Population Per Capita Consumption (year 1992 thru Nov.)

	Montana
	(799,065)
	U.S. (national)
	(256,410,000)
	N. Cheyenne
	(3,542)
	Crow
	(4,724)
	Fort Belknap
	(2,338)
	Rocky Boy
	(1,882)
	Fort Peck
	(5,782)
	Blackfeet
	(7,025)
	Flathead
	(5,130)



Amounts are in packs of cigarettes
Amounts in () are population numbers
Population data from 1990 census

Montana Reservation- Exempt Cigarette Sales

1990

1991

1992

1993 Quotas

Rocky Boy	15,553	17,469	14,989	18,500
Crow	38,038	34,983	29,372	27,000
N.Cheyenne	15,553	17,469	14,989	34,300
Ft. Peck	114,937	111,862	107,724	60,000
Blackfeet	230,862	130,202	375,194	
Flathead	2,355,414	2,130,452	665,896	
Ft. Belknap	21,027	23,031	22,137	

Totals

2,831,027

2,691,600

1,234,438

112,800

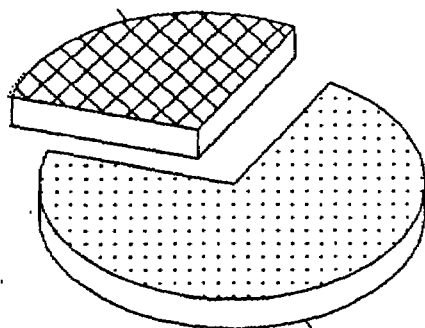
Amounts are in Cartons - (1992 Jan -Nov)

Montana Cigarette Sales

Percent of Total Sales

EXHIBIT #1
DATE 1-27-93
HB-283

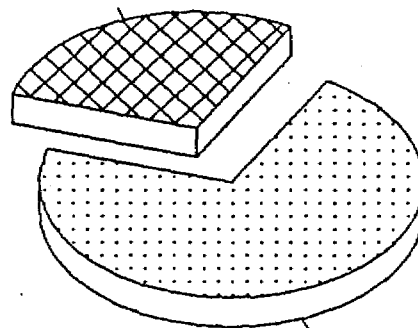
Exempt Sales
29%



Taxable Sales
71%

1990

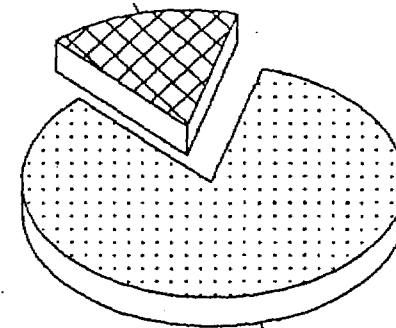
Exempt Sales
29%



Taxable Sales
71%

1991

Exempt Sales
16%



Taxable Sales
84%

1992

1992 Sales are for Jan thru Nov

Sales are in Cartons

	1990	1991	1992
Exempt Sales	2,831,000	2,691,600	1,234,400
Taxable Sales	7,022,900	6,716,100	6,289,100
Total Sales	9,853,900	9,407,700	7,523,600

Cigarette Sales

Comparing Allocation for Enrolled Members With Montana & Nat'l Per Capita Consumption

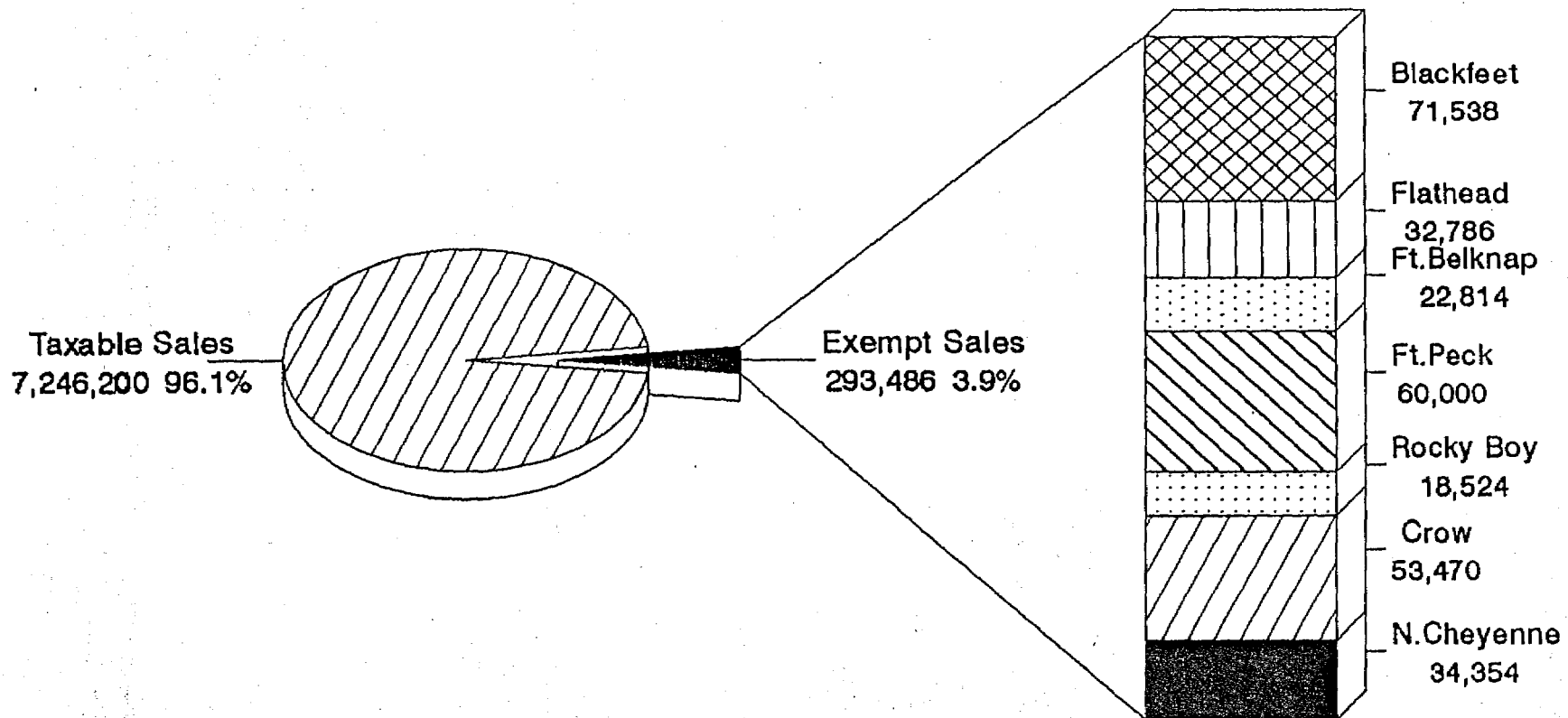
Signed Agreements with the State of Montana			
	Packs Quota	Enrolled Members	Enrolled Per Capita Quota
Northern Cheyenne	343,540	4,138	83
Crow	534,700	6,367	84
Rocky Boy	185,240	1,858	100
Ft Peck	600,000	5,312	113
Montana	Per Capita consumption per data from Tobacco Institute		83
U.S. (National)	Per Capita consumption per data from Tobacco Institute		97

No Agreements with the State of Montana			
Allocations under HB 283			
	Enrolled Members	U.S. Per Capita Consumption	Quota Packs
Ft Belknap	2,352	97	228,144
Flathead	3,380	97	327,860
Blackfeet	7,406	97	715,382

Exempt Cigarette Sales

As sales should be under quota agreements
Estimated Sales 7,539,686

EXHIBIT #1
DATE 1-27-93
HB-283



Amounts are in cartons

EXHIBIT 2
DATE 1/27/93
HB 283

Amendments to House Bill No. 283
First Reading Copy

Requested by Department of Revenue
For the Committee on Taxation

Prepared by Lee Heiman
January 26, 1993

1. Page 4, line 9.

Following: "16-1-111."

Insert: "A tribal tax must be distributed to the tribe as
determined in a negotiated formula based on population."

Reason for amendment: The department proposes this amendment to clarify that revenue sharing between a tribe and the state shall be determined in negotiated agreements and based on the number of tribal members residing on a reservation who are exempt from the state cigarette sales tax.

Amendments to House Bill No. 283
First Reading Copy

3
DATE 1/27/93
HB 263

For the Committee on Taxation

Prepared by Department of Revenue and
Lee Heiman
January 26, 1993

1. Page 3, line 17.

Following: the first "agreement"

Insert: "providing for revenue sharing of cigarette taxes with
the tribe or enlisting the tribe's assistance in enforcing
the provisions of this chapter"

Strike: "The"

Insert: "An"

Following: the second "agreement"

Insert: "sharing revenue of cigarette taxes with a tribe"

2. Page 8, line 8.

Following: "quota"

Insert: ", as established in a cooperative agreement between the
department and an Indian tribe or as set out in this
chapter, "

3. Page 9, line 2.

Strike: "populations determined"

Insert: "as provided"

4. Page 10, line 16.

Following: "quota"

Insert: ", as established in a cooperative agreement between the
department and an Indian tribe or as set out in this
chapter, "

5. Page 11, line 10.

Strike: "populations determined"

Insert: "as provided"

These amendments have been proposed by counsel representing the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The amendments clarify that Montana and Montana tribes may enter into cooperative agreements concerning the annual quota of tax free cigarettes entering Montana reservations. Montana currently has agreements imposing a quota with four tribes. The existing bill provides that the state and a tribe may enter into a cooperative agreement providing for a sharing of revenue generated by the tax. The department of revenue concurs in these proposed amendments.

EXHIBIT 4
DATE 1/27/93
HB 283

AMENDMENT TO HB 283

PROPOSED BY CONFEDERATED SALISH AND KOOTENAI TRIBES

January 27, 1992

On page 3, line 7, before the period, add the following:

" , or such other formula or amount agreed to in a state-tribal cooperative agreement"

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

HB 283
HB 297
HB 312

House Location _____

COMMITTEE _____

BILL NO. _____

DATE 27 Jan 93 SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Jeff Miller	DOR HB 283	✓	
Bob TURNER	DOR HB 297	✓	
Rep. Lady Bird	HB 282	✓	
PAT Smith	Salish Kootenai HB 283		✓
Bill Stevens	1114 Food Diet Area	✓	
GEORGE OLCHENSKI	CONFEDERATED SALISH KOOTENAI TRIBE HB 283	Amend	
PAT SMITH			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

Closing Statement by Sponsor:

REP. McCULLOCH said it is evident that there is a problem in Montana with easily faked drivers licenses. The bill is not intended to invade privacy but to make licenses more secure.

EXECUTIVE ACTION ON HB 283

Motion: REP. ELLIOTT MOVED HB 283 DO PASS.

Motion: REP. ELLIOTT moved adoption of all three sets of amendments. The sponsor indicated he had no problem with the amendments.

Discussion: REP. ELLIOTT said a tribal tax is a tax that is implemented by the tribe and the Department of Revenue has agreed to collect that tax for the tribe. The amendment drafted by Mr. Heiman on January 26 is to make sure that the tax is distributed back to the tribe on a proportionate basis. He understood a state/tribal agreement would take precedence over the formula.

Vote: Motion to adopt the amendments carried unanimously.

Motion: REP. ELLIOTT MOVED HB 283 DO PASS AS AMENDED.

Motion: REP. DRISCOLL moved to amend HB 283 on page 17, line 1, strike "July 1, 1993" and insert "when cooperative agreement negotiations are complete."

Discussion:

REP. DRISCOLL said the bill, as written gives the state a much superior position to the tribes. It is not fair to put the tribes in a position where they have to agree or they get nothing.

REP. ELLIOTT said the original bill, enacted by the 1991 Legislature, imposed a quota on all tribes in the state of Montana and also contained provisions for a study on state/tribal taxation. The quota was removed from the bill and the study was provision retained. During testimony on that bill the Salish-Kootenai Tribe asked that they only pass the portion of the bill which mandated that the state negotiate in good faith with the leaders to work on cigarette taxes, as well as other areas of taxation, and to delay the effective date on the levy of the tax to the next year. They were asking for a one year leeway to negotiate the tax. It was extended to two years. Nothing was forthcoming as far as an agreement on a cigarette tax. This bill

gives the tribes another five months to negotiate. This is not a tax on Indians but on non-enrolled members who are on the reservation illegally buying cigarettes. He said the state is within its rights to impose a quota to recover a tax that is legally imposed by the state and that can be legally recovered by the state.

REP. REAM asked Judy Rippingale, Department of Revenue (DOR), how the negotiations are going with the three remaining tribes. Ms. Rippingale said the tribes are negotiating but are far from reaching an agreement. All agreements can be amended on 30 days notice. She said five months should be adequate time to reach basic agreement.

REP. HARPER asked Ms. Rippingale if the tribes could unilaterally cancel the agreements? Ms. Rippingale said they would have one year on the cigarette agreements.

REP. HARPER asked if the bill is passed and they are not successful in negotiating the agreements, what would happen on July 1? Jeff Miller, DOR, said if no agreement was in place, as of July 1, DOR would calculate the supply of cigarettes to be distributed to a particular reservation based on national per capita consumption for enrolled members and would distribute those tax free cigarettes based on past consumption patterns of various smokeshops. He said there are four negotiated agreements in place which will run for one year and are not impacted by this bill. He said they need a tool to address the problem of excess supply now in place.

REP. FELAND said he lives close to a reservation and he sees van loads of cigarettes leaving the reservation. These negotiations have been going on for a long time, but it seems nothing is ever settled. He said the bill would at least allow a quota to be imposed. He supported the bill without REP. DRISCOLL'S amendment.

REP. TUNBY agreed with REP. ELLIOTT and opposed the amendment.

REP. DRISCOLL withdrew his amendment.

Vote: Motion that HB 283 DO PASS AS AMENDED carried 19-1 with REP. DRISCOLL voting no.

EXECUTIVE ACTION ON HB 207

Motion: REP. HARPER MOVED HB 207 DO PASS.

Discussion: REP. ELLIOTT asked if anyone could briefly explain the bill. CHAIRMAN GILBERT said the money is currently going into the general fund and HB 207 will create a special revenue

HOUSE OF REPRESENTATIVES

TAXATION

COMMITTEE

ROLL CALL

DATE

2/3/93

NAME	PRESENT	ABSENT	EXCUSED
REP. GILBERT, CHAIRMAN	✓		
REP. FOSTER	✓		
REP. HARRINGTON			
REP. ANDERSON	✓		
REP. BOHLINGER	✓		
REP. DOLEZAL	✓		
REP. DRISCOLL	✓		
REP. ELLIOTT			
REP. FELAND	✓		
REP. HANSON	✓		
REP. HARPER	✓		
REP. HIBBARD	✓		
REP. KELLER	✓		
REP. McCAFFREE	✓		
REP. McCARTHY	✓		
REP. NELSON	✓		
REP. ORR	✓		
REP. RANEY	✓		
REP. REAM	✓		
REP. TUNBY	✓		

HOUSE STANDING COMMITTEE REPORT

February 3, 1993

Page 1 of 2

Mr. Speaker: We, the committee on Taxation report that House Bill 283 (first reading copy -- white) do pass as amended.

Signed: _____
Bob Gilbert, Chair

And, that such amendments read:

1. Page 3, line 7.

Following: "made"

Insert: "or any other formula or amount agreed to in a state-tribal cooperative agreement"

2. Page 3, line 17.

Following: the first "agreement"

Insert: "providing for revenue sharing of cigarette taxes with the tribe or enlisting the tribe's assistance in enforcing the provisions of this chapter"

Strike: "The"

Insert: "An"

Following: the second "agreement"

Insert: "sharing revenue of cigarette taxes with a tribe"

3. Page 4, line 9.

Following: "16-1-111."

Insert: "A tribal tax must be distributed to the tribe as determined in a negotiated formula based on population."

4. Page 8, line 8.

Following: "quota"

Insert: ", as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, "

5. Page 9, line 2.

Strike: "populations determined"

Insert: "as provided"

6. Page 10, line 16.

Following: "quota"

Insert: ", as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, "

February 3, 1993
Page 2 of 2

7. Page 11, line 10.

Strike: "populations determined"

Insert: "as provided"

Handwritten: 2/3/93

Amendments to House Bill No. 283
First Reading Copy

For the Committee on Taxation

Prepared by Lee Heiman
February 3, 1993

~~EXHIBIT~~

DATE 2-3-93

~~Executive Action~~

H8-283

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Insert: "as provided"

Amendments to House Bill No. 283
First Reading Copy

For the Committee on Taxation

Prepared by Department of Revenue and
Lee Heiman
January 26, 1993

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Insert: "An"

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Insert: "as provided"

These amendments have been proposed by counsel representing the Assiniboine and Sioux Tribes of the Fort Peck Reservation. The amendments clarify that Montana and Montana tribes may enter into cooperative agreements concerning the annual quota of tax free cigarettes entering Montana reservations. Montana currently has agreements imposing a quota with four tribes. The existing bill provides that the state and a tribe may enter into a cooperative agreement providing for a sharing of revenue generated by the tax. The department of revenue concurs in these proposed amendments.

Amendments to House Bill No. 283
First Reading Copy

Requested by Department of Revenue
For the Committee on Taxation

Prepared by Lee Heiman
January 26, 1993

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Insert: "A tribal tax must be distributed to the tribe as
determined in a negotiated formula based on population."

Reason for amendment: The department proposes this amendment to clarify that revenue sharing between a tribe and the state shall be determined in negotiated agreements and based on the number of tribal members residing on a reservation who are exempt from the state cigarette sales tax.

AMENDMENT TO HB 283

PROPOSED BY CONFEDERATED SALISH AND KOOTENAI TRIBES

January 27, 1992

On page 3, line 7, before the period, add the following:

" , or such other formula or amount agreed to in a state-tribal cooperative agreement"

Pat Smith Amendment

and it does not apply to governmental entities unless the total of the levied amounts is less than \$5. Senator McCaffree said in many cases there are taxes on lots in ghost towns that amount to a few cents, and the County Treasurer's processing time amounts to more than the actual tax. In 1991, the Legislature passed the \$5 minimum property tax law. Since enactment, there have been legal questions whether the tax applied to real property or personal property. The decision was made that the \$5 minimum property tax law applied only to real property. HB 327 will apply the \$5 minimum tax to both real and personal property. Where cities own several portions of property of minimal tax, rather than pay \$5 on each one, HB 327 will allow several lots to be bunched together and the \$5 tax applied to all of the lots.

Proponents' Testimony:

Cort Harrington, Montana County Treasurer's Association, spoke in favor of HB 327, saying the County Treasurers have asked that this bill be passed.

Lynn Moon, City of Helena, spoke in favor of HB 327. Ms. Moon said that last year, because of lack of clarification in the previous bill, the City of Helena had to pay \$500 on small remnants of land which had 2-cent special assessment taxes due.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

None.

Closing by Sponsor:

Senator McCaffree offered no further comments on closing.

HEARING ON HB 283

Opening Statement by Sponsor:

Representative Jim Elliott, House District 61, presented HB 283, which is a bill attempting to correct the problem the State of Montana is having with collecting the lawfully-imposed tax on non-Tribal sales of cigarettes on Reservations. Rep. Elliott said HB 283 also attempts to end an unfair competitiveness practice under the current system, which allows stores on Reservations owned in part by a Tribal member to enjoy marketing a tax benefit over other stores on that Reservation.

The history of the Tribal tax issue, according to Rep. Elliott, is that the U. S. Government granted Tribes immunity from state taxes. The State Department of Revenue wants to collect taxes that it has lawfully imposed on the sale of cigarettes to people who are not Tribal members. In a 1990 Oklahoma case, the Supreme Court ruled that the State has a legitimate interest and can collect taxes on cigarettes sold on the Reservation to non-Indians, and they may also impose a quota system to do this.

Rep. Elliott said in 1979, only 4% of the cigarette sales in Montana were tax-exempt sales. By 1990, 29% of the sales of cigarettes in Montana were tax-exempt and sold on Reservations in the state. Rep. Elliott presented and explained Exhibit No. 1 to these minutes.

In the 1991 Legislature, House Bill 1012 was presented which was a similar bill to this bill, HB 283. During that session, the Senate cut out the quota, and what came back to the House was a bill that said the Department of Revenue would study the issue and enter into negotiations with the various Tribes. Since the enactment of that bill and today, four Tribes (Rocky Boy, Crow, Northern Cheyenne, and Fort Peck) have negotiated agreements on cigarette taxation with the State of Montana, and three Tribes (Blackfeet, Flathead, and Fort Belknap) have not. If passed, HB 283 will respect those negotiated agreements and, on July 1, 1993, the Department of Revenue will have the authority to impose a quota system on those Tribes which still do not have an agreement with the State of Montana. HB 283 defines the quota, which is the national consumption of cigarettes times the number of enrolled Tribal members living on the Reservation, determined by the U. S. Census. HB 283 also leaves an opening for Tribes with existing negotiated agreements to re-negotiate that quota. The quota will change every fiscal year to reflect the number of enrolled Tribal members then living on Reservations.

Rep. Elliott said the national consumption average of cigarettes is 97 packs per year per man, woman and child down to the age of one day old. In Montana, the consumption average is 88 packs per year on the same population. The DOR's use of the national average in HB 283, rather than Montana's average, is more generous. HB 283 will allow the Tribes to get out of the agreement with one year's notice, and has revenue-sharing language with the Tribes if a similar tax is collected by the Tribes.

On taxes collected at the wholesale level, stamps will be required on all cigarettes sold in the State of Montana, and wholesalers will be allowed a rebate for the number of cigarettes that are apportioned to the Reservations in their wholesaling district. The fiscal note estimates the State of Montana will collect \$700,000 in tax revenue.

Rep. Elliott said this is not an effort to tax Tribal members for any cigarettes consumed on the Reservation. It is an effort to collect taxes legally imposed on non-Tribal members.

Proponents' Testimony:

Senator Barry "Spook" Stang, spoke as a representative of Senate District 26, and as a retailer of a business located just off the Flathead Reservation. Senator Stang said that before the Tribes started selling cigarettes without collecting the tax, his business sold 50%-60% of their cigarettes to people from Washington and Idaho. Since the Tribes started selling cigarettes without collecting the taxes, his cigarette trade dropped 50%. This issue has been a concern of the food distributors in Montana who feel the quota system should be imposed on the Tribes so non-Tribal businesses off the Reservations are on equal footing with Tribal businesses on Reservations. Senator Stang said this has been a tax evasion which has harmed the people in the State of Montana.

Bill Stevens, Montana Food Distributors Association (MFDA), spoke in favor of HB 283. Mr. Stevens said the sole purpose of HB 283 is to try to provide a level playing field in terms of the sale of cigarettes for MFDA grocers throughout the state.

Opponents' Testimony:

George Oschenski spoke in opposition to HB 283 as a representative of the Confederated Salish and Kootenai Tribes.

James Weber, Tribal Attorney for the Confederated Salish and Kootenai Tribes, said the Tribe's major objection to HB 283 is the constitutional problem with the bill. Mr. Weber said HB 283 does not provide any mechanism for allocating the arbitrary quota that is set in the bill, for implementing the quota, and for insuring that Tribal members receive the tax exemption they are entitled to under Federal law, regardless of whether the arbitrary quota has been exceeded. Mr. Weber said the Confederated Tribes are continuing to enter into an agreement with the State of Montana, but in the absence of that agreement, the State must establish a system that assures that Tribal members will receive the tax exemption they are entitled to under Tribal law. Mr. Weber spoke of the unilateral rights the Tribe has for imposing various taxes within the Reservations. Mr. Weber said the DOR is saying the state has suffered tax losses on cigarette sales; however, the State has, for a number of years, imposed its gasoline tax on both the Tribes and individual Tribal members. Mr. Weber said that in addition to negotiating agreements on the cigarette tax, the Tribe is trying to negotiate an agreement on the gasoline tax. Mr. Weber further said it is within the authority of the Tribes to unilaterally seek a judicial solution, and if the Tribe seeks a judicial solution, it won't be a solution to bar the illegal taxation of Tribal members

and the Tribes, themselves, in the future, it will be a legal action to recover the back taxes the State has illegally enacted.

Mr. Weber said he had some technical comments about HB 283. He believes Section 3 (2) and (3) should be clarified to make it clear that those subsections only apply in cases where there is a Tribal agreement in place. Section 7 provides an enforcement mechanism and provides for expenses of law enforcement agencies to be reimbursed out of the sale of seized contraband. Mr. Weber said this section would apply if there is a Tribal/State agreement. If there is such an agreement, the Tribe would be looking to Tribal law enforcement to aid in the enforcement of the agreement. Mr. Weber said Section 7 should be amended to allow reimbursement of Tribal law enforcement expenses related to cigarette violations as well as local, state and federal law enforcement expenses. Mr. Weber further said he believes Section 13 should specifically refer to HB 92.

Margaret Hall, a member of the Flathead Tribe, is an independent business person on the Reservation. Ms. Hall said she does sell tax-free cigarettes, and she is opposed to HB 283. Ms. Hall said she employs 22 people and, besides herself, only three are Tribal members. She believes by cutting down on her sales, she will have to lay people off, which will place these people on welfare rolls and they would not be paying income tax. Ms. Hall said she is not the only business person on the Reservation who employs non-Indian help. She said her Tribe has been working for a Tribal/State agreement, and she doesn't know why this issue is before the Legislature when the agreements are being worked out.

Randy Walton of Ronan, said his wife has a small Tribal cigarette store on the Reservation. Mr. Walton said the reason he is against HB 283 is that he borrowed money five years ago, and put in \$25,000 of his own money, to buy his wife's store. He feels he has 15 years of his life invested in this store and if HB 283 is passed and a quota system is imposed, he will be out of business. He said he has a \$100,000 note to pay off and would not be able to pay back this debt without having the income from the business.

Informational Testimony:

Charlotte Maharg, Department of Revenue, addressed Exhibit No. 1 as being the basis for HB 283, and further explained the charts and graphs included. Ms. Maharg pointed out the drop in exempt sales of cigarettes from 29% in 1991 to 16% in 1992, which she credited to the effectiveness in enforcement activities and negotiations with the Tribes.

Ms. Maharg said there are Federal charges against nine people in Montana involving 2800 counts of Federal racketeering, money laundering, and trafficking in contraband cigarettes. The money involved in those particular charges is \$46 million, which

included a \$16 million loss in tax revenue to the State of Montana.

The final page in Exhibit No. 1 estimates what the 1993 exempt sales should be. If the quota agreements are put into place, the exempt sales should be around 300,000 cartons of cigarettes, or 3.9%.

Ms. Maharg said the focus of HB 283 is not on taxing Indians, but on non-Indians buying cigarettes illegally. She said because Montana doesn't stamp all the cigarette cartons sold, and because the state hasn't controlled its own problem in-house, it opens the state up to be unwilling accomplices to some illegal activity.

Questions From Committee Members and Responses:

Senator Gage asked James Weber about the provision in HB 283 that says the Tribes must enact a cigarette tax identical to the state tax. The theory is that Tribal members would be paying the Tribal tax, and non-Tribal members would be paying the state tax. The state would collect those funds and on an agreed-upon basis, would remit the Tribe's share of the Tribal tax on Tribal members to the Tribes. If this theory actually works, would Mr. Weber have any trouble with the constitutionality of this, other than the fact that the quota system doesn't necessary mean that the Tribal members are smoking just that amount of cigarettes. Mr. Weber said he is not sure what Section (2) means when it refers to a tax that is paid under identical conditions as those imposed by the state. His interpretation would be that it is referring to a Tribal tax on non-members, which would be an identical tax to the tax the state is imposing. Tribes in general have the authority to tax both non-member purchases, and member purchases, on the Reservations. Mr. Weber said the Tribal Constitution on the Flathead Reservation bars the Tribe from imposing a tax assessment on Tribal members, absent a referendum by the Tribal membership. In general, he doesn't see a constitutional problem with Tribes imposing a tax either on non-Indians or on their own Tribal members. But his assumption is, from the language that addresses the dual taxation, which is the taxation of non-members by both the state and the Tribe, that this section is referring to a Tribal tax on non-members.

Senator Stang said he sat through the House hearings on HB 283 and the Tribal attorney present said the Tribe opposed this bill minimally and offered certain amendments. The House put on the amendments and assumed this took care of all the problems. Senator Stang asked Mr. Weber the reasons for the smoke screen now. Mr. Weber said his understanding is the testimony at the House hearing suggested the amendments that were made, but also pointed out the problem with setting an absolute quota in the absence of a Tribal/State agreement, and pointed out the fact that HB 283 lacks any sort of instruction about implementation in the absence of a Tribal/State agreement. Mr. Weber said the

problem is the bill unilaterally establishes a quota, but says nothing about how you assure that the quota cigarettes get to the Tribal members who are entitled to the tax exemption. It also says nothing about what happens if the quota cigarettes are properly sold to Tribal members and, at the end of the year, the quota has been reached and there are Tribal members who want to buy cigarettes. Mr. Weber said the Federal law isn't that the exemption exists until the quota is met, but that the exemption exists, period. A mechanism would have to be set up by the state in the absence of a Tribal/State agreement to assure that the exemption is honored.

Senator Stang asked Bill Stevens is there are any records of the number of jobs lost by people off the Reservations when the Tribes started illegally selling cigarettes on Reservations. Mr. Stevens does not have those figures, but he assumes it would be a comparable amount as to those Ms. Hall was referring to in her testimony.

Senator Yellowtail asked Charlotte Maharg about the status of negotiations with the various Tribes. Ms. Maharg said agreements were executed in late summer and early fall of 1992 with the Rocky Boy, Crow, Northern Cheyenne, and Fort Peck Tribes, and are effective beginning in January of 1993. Dave Woodgerd said the DOR has met with the Blackfeet, Flathead and Fort Belknap Tribes at least a couple of times, but agreements have not been negotiated. Mr. Woodgerd said the bill last legislative session required the DOR to negotiate these agreements, and the Department has been meeting with the Tribes since that bill was passed. He said no progress is being made, and the DOR doesn't believe they will make further progress, in negotiating agreements with the remaining three Tribes without some further action on the part of the Legislature. This is why the DOR is asking for the quotas at this time and Mr. Woodgerd doesn't think the DOR will get an agreement unless the quota system is in place or capable of being put in place.

Senator Yellowtail asked Jim Weber if it is his opinion that an agreement will not be reached. Mr. Weber said he does not agree with that and the Tribe is prepared to negotiate. He said there has been a lull in negotiations, mostly because there has been a change in personnel in the state negotiating team as well as the Tribal representatives.

Senator Doherty asked Mr. Weber about his statement on the possibility of lawsuits for back gasoline taxes which the Tribe contends were illegally levied, and if Mr. Weber had any idea how much that amount would be. Mr. Weber said he did not have that information. Senator Doherty asked if there have been similar lawsuits filed in other states, and what is the outcome. Mr. Weber said there have been lawsuits, but he is not sure if they dealt with the gasoline taxes. He successfully handled a lawsuit in California involving indirect taxation of Tribal timber by that state. Senator Doherty asked what the outcome would be if

the Tribes in Montana pressed such a lawsuit on gasoline taxes. Mr. Weber said he believes the outcome would be that the Court would find that the State does not have authority to tax either Tribal members or the Tribal government for gasoline purchases.

Senator Doherty asked Dave Woodgerd for his opinion about the likelihood of such a lawsuit. Mr. Woodgerd said the King-Cartwright Act authorizes states to impose gasoline taxes upon Reservations, however that Act has not been litigated. Until the issue is litigated, no one knows the answer to that question. The State of Montana's position is that the state has a legal right to impose that tax.

Senator Gage asked that if the Flathead Tribe does not pass a referendum with regard to taxation on cigarettes, and cannot enforce or implement a tax identical to the state tax on cigarettes, what happens to HB 283 as far as the Flathead Reservation is concerned. Mr. Woodgerd said the agreements entered into with the other four Tribes do not involve a tax imposed by the Tribes. Those Tribes have decided not to impose a tax, so the agreement with them is that they will police their own members to try to insure that only Tribal members purchase the tax-free cigarettes. Those Tribes have agreed to enforce the quota. The State has, in turn, agreed to allow the Tribes to allocate the quota.

Senator Gage asked Ms. Maharg for clarification of the 1993 quotas to the Northern Cheyenne Reservation. She explained that not as many members on that Reservation smoke cigarettes, but they are allotted their quota on the number of members in the Tribe.

Senator Brown asked Mr. Weber about the total enrollment on the Flathead Reservation. Mr. Weber said the total membership is between 5,000 and 6,000, and roughly half of those people live on the Reservation. Mr. Weber said there are census figures available. Senator Brown asked if sales of quota cigarettes to Tribal members could be policed easiest by having Tribal identification cards for Tribal members. Mr. Weber said that would be an option, but there would be some administrative costs involved.

Senator Eck asked Mr. Weber what kinds of agreements would need to be made for a sales tax and could that be molded into an agreement on cigarettes as well. Mr. Weber said he thought similar mechanisms could be used under a sales tax agreement, but since a sales tax does not exist, he thought it is not included in the statute that authorizes the agreements. He said negotiation of agreements would be desirable, but he doesn't think it would be legally required of the state as long as the state implemented a system that assures that Tribal members receive the exemptions to which they are entitled under Federal law.

Senator Eck asked Rep. Elliott about the hardships of the businesses on the Flathead Reservation on the basis of current practice in illegal sales of cigarettes. Rep. Elliott said these businesses have made a significant investment based on an economic decision that, unfortunately, involves making money off an illegal act. Rep. Elliott said it is illegal in the State of Montana to not collect the tax sold on cigarettes to anyone who is not a Tribal member. He said some people may lose their jobs because of a decrease in illegal cigarette sales on the Reservations, but they will be picked up somewhere else.

Senator Stang questioned Dave Woodgerd about the lack of agreements and the method of implementation of HB 283, and if an agreement is reached, if the language in HB 283 would be part of the agreements, and if the Tribes issued IDs and only tax-exempt cigarettes could be sold to Tribal members, would the DOR renegotiate the quotas each year based on the number of Tribal members buying cigarettes. Mr. Woodgerd said this is true, and in the Fort Peck Tribe agreement, the vendors will keep track of who they are selling cigarettes to, and if the quota runs out, the Tribe will come to the DOR for renegotiating the quota.

Senator Stang asked that if a State/Tribal agreement is not worked out, and the DOR imposes quotas, and, at the end of the year if the Tribes can prove that they sold more cigarettes to their Tribal members, would the DOR have to re-negotiate those agreements based on the amounts the Tribes have sold to their members? Mr. Woodgerd said he believed this is true. Mr. Woodgerd said there is no problem with the constitutionality of HB 283 as written, but he would agree with Mr. Weber that it could be unconstitutional in its implementation if it somehow works to deprive Tribal members tax-free cigarettes. If that situation arose, it would be incumbent upon the DOR to make sure the quota was rearranged in such a way that all Tribal members could purchase cigarettes tax-free.

Senator Stang asked if the Tribal attorney's testimony during the House hearing on HB 283 was that the Tribe was not in serious disfavor with this bill because the Tribe was trying to come up with a mechanism on the Reservation to issue Tribal IDs and enforce their own regulations on cigarette dealers on the Reservation. Mr. Woodgerd said this is the way he remembered the testimony by the Tribal attorney at the House hearing.

Senator Van Valkenburg, relating to the question by Senator Yellowtail on whether this legislation is premature, asked Mr. Woodgerd how many other agreements have been reached with the Flathead, Blackfeet, and Fort Belknap Tribes. Mr. Woodgerd said he is not familiar with any agreements other than the Fish and Game agreements, and that there is a gaming agreement with only one Tribe, the Fort Peck Tribe.

Senator Van Valkenburg questioned Mr. Weber about any agreements reached with the Flathead Tribe besides the Fish and Game agreement. Mr. Weber said he is not aware of any other agreements.

In light of the time involved in the Federal indictment against the people involved in the illegal cigarette sales issue which may take another year or so, Senator Halligan asked if the effective date of HB 283 should be more sensitive to the negotiation process, and if this would be acceptable to the DOR. Mick Robinson, Director of the Department of Revenue, said the Department would probably resist changing the effective date. He believes the state has worked very hard over the last two years to try to reach an agreement with all of the Tribes on cigarette sales, that four Tribes have signed agreements, but the Department doesn't sense that any agreements will be worked out with the three remaining Tribes in the near future. The intent of the last Legislature was to allow more time to negotiate, and the two years has run without successful negotiations with three Tribes. Mr. Robinson believes some end must come to the continued delay.

In response to further questions by Senator Halligan, Mr. Robinson said the mechanism included in HB 283 allows the Department to pre-collect the cigarette tax from the wholesalers. The wholesalers will be providing the cigarettes to the Reservations and the wholesaler will request a credit for the tax based on the portions of quotas they are providing to that Reservation. The quotas are very generous to all enrolled members of the Reservations. If the quota is exhausted prior to the end of the year, the question would arise if there are still illegal sales taking place on the Reservations.

Senator Doherty asked Rep. Elliott if HB 283 is passed and the market is taken away, even though it is an illegal market, would the cigarette sales go to other areas or to other states. Rep. Elliott said that sales of cigarettes on the Reservation will decline because it is suspected that some of these are being bought and shipped out of state where they are bought tax-free. The object of this bill is not to "level the playing field" for off-Reservation and on-Reservation non-Tribal stores; the issue is one of collecting a lawfully-imposed tax.

Senator Gage questioned Mr. Robinson about some sections in HB 283 which would become effective July 1, 1993, that deal with illegal activities, and why aren't those made effective on passage and approval. Mr. Robinson said they could be changed to be effective on passage and approval.

Senator Gage asked Kathleen Fleury, the Indian Affairs Coordinator for the Governor, if she could tell the Committee of any other agreements with the Tribes. Ms. Fleury said there are numerous cooperative agreements, many in the human services area. She will furnish that information to this Committee.

Senator Eck asked Margaret Hall what impact it would have on her business if there were Tribal identification cards. Ms. Hall said she would have no problem in implementing that; she is computerized in her business and has many ways to work this out.

Senator Yellowtail asked if the present agreements with the four Tribes meet the requirements of Section 3, including the 5% administrative expense off the top which goes to the Department of Revenue. Dave Woodgerd said Section 3 is permissive; no Tribe is required to enter into it. The quota will be set by cooperative agreement with the Tribes. Mr. Woodgerd said the administrative expense would only apply in the case where there is a cooperative agreement and which the Tribe is also imposing a tax. There is no administrative expense in the agreements with the four Tribes who have signed agreements, because the Tribes chose not to impose a tax.

Closing by Sponsor:

Rep. Elliott said there are currently 6.6 million packs of cigarettes, per person, being sold on the Flathead Indian Reservation. The national average is 97 packs of cigarettes a year. Rep. Elliott said that when Pat Smith, Tribal Attorney, testified at the House hearing on HB 283, Mr. Smith said, "I stand in moderate opposition to this bill". Mr. Smith offered an amendment which is now included in the bill. Rep. Elliott said that now, after moderate opposition, and having the amendment put on the bill, the Flathead Tribe seems to be in strong opposition to the bill, and he is confused about what happened between the time of the House hearing and the Senate hearing.

Rep. Elliott said the quotas agreed to between the Rocky Boy, Crow, Northern Cheyenne, and Fort Peck Tribes and the State of Montana have been generous, they have been agreed to by both parties and in two cases the quota was less than the tax-free cigarettes the Tribes were selling on their lands, and in one case, 2.2 times more.

Rep. Elliott said the overriding objection he hears to HB 283 is why the rush, why is the bill being forced. In answer, he quoted the testimony of the Confederated Tribes' attorney, Evelyn Stevenson, during the 1991 Legislative Session when she asked for one more year, to July 1, 1992, in which to enact the similar bill which was before that Legislature, so agreements could be worked out. Rep. Elliott said the Tribe asked for one year, they were given two years. There is an additional four months before HB 283 would go into effect, and Rep. Elliott feels the Tribe has had ample time to negotiate with the State of Montana. He asks the Committee to pass HB 283.

DISCUSSION ON SB 235 AND SB 283

Senator Van Valkenburg asked Mick Robinson, Director of the Department of Revenue, if the DOR has done an update of its analysis of the MACO property tax reform proposal to identify the most significant differences between SB 283 from SB 235. Mr. Robinson said an analysis was done in September, 1992, on the property tax component, and the DOR is presently updating that. Copies of that Analysis are attached to these minutes. Senator Van Valkenburg said he does not think it is possible to go into the sales tax issue without having that analysis, especially in trying to combine some of the MACO property tax reforms in SB 283 with SB 235. Mr. Robinson agreed it would be difficult for this Committee to make a final judgment on the total bill without the information regarding the property tax component.

Senator Eck asked Mr. Robinson if the DOR is going to make some proposed amendments to the Sales Tax portion of SB 235. Mr. Robinson said the Department does have some amendments they will be proposing, and will be expressing some concerns, including dealing with sales between affiliated companies as it relates to double taxation.

Senator Eck asked Mr. Robinson if the DOR has looked at different levels of retirement exemptions, in that the SB 235 exclusion may be higher than it needs to be. Mr. Robinson said information is available that will give an indication of what the difference would be in terms of tax relief at various levels of retirement benefits.

Senator Eck asked Mr. Robinson about not allowing a deduction for charitable contributions in the income tax portion of SB 235. Mr. Robinson said the Department could provide information regarding the total cost of contributions based on those taxpayers that presently itemize at the state level. Mr. Robinson also said the Department could provide a tax impact, in terms of the 6% flat tax proposal, allowing the standard deductions, and additional contributions that could be allowed as a deduction above the standard deduction level.

Senator Gage asked to what extent the administration has concern that SB 283 increases the taxable values about 17 times in the State of Montana without any change in the millages of the various taxing authorities. Mr. Robinson said that is one of the concerns the Department has seen expressed in terms of moving to 100% of market value as a taxable value. There is a perception that any tax relief will only be temporary in nature. He does not know how this can be countered, but should be addressed.

Senator Gage said that since SB 283 would be a percentage of the Federal tax, one would have to recalculate the Federal tax based on deductible items that the State allows but are not allowed in the Federal tax, and take a percentage of that recalculated tax. Senator Gage asked Mr. Robinson if the

Department has looked at anything in the line of an income tax based on the Federal tax that would not require that kind of calculation but would allow a credit in place of those things that Montana allows deductions for, so one wouldn't have to go in and recalculate the Federal tax. Mr. Robinson said he sees many problems with a Montana income tax system that is based on a percentage of Federal taxes. The main purpose behind going to the proposal in SB 283 is for simplicity. However, Mr. Robinson said it is much more complicated because some items are taxed at the Federal level that Montana is not able to tax at the state level. There would have to be adjustments made, and there are four or five other adjustments that would have to be made, including unemployment benefits. Mr. Robinson said the trouble with that kind of process is we could end up with a tax form that may be as cumbersome as what we have, or at least as cumbersome as a 6% or a flat tax based on present Montana adjusted income. Mr. Robinson said his personal preference is to a flat tax based on Montana adjusted gross, rather than a flat percentage of Federal tax.

Senator Eck commented that it would be useful if a simulated tax form could be put together in order to look at the SB 235 proposal on income tax, because there are so many changes in the number of rebates. Regarding the renter's relief in SB 235, and since we already have a low income and elderly rental relief in our State income tax, Senator Eck asked if we would be getting rid of the present one, or would there be two? Mr. Robinson said he couldn't give a clear answer, but we would not want to have a double credit, so the Department does need to address that particular issue.

Mr. Robinson said the Department has been looking at the MACO proposal (SB 283) and is doing some work on the property tax area. Another idea thrown into the discussion to compliment SB 235 is some connection with the school equalization, and some proposals that are being developed. One of the key things the Department would like to look at in terms of property tax relief is a way to flow the property tax relief into a reduction of the state-wide mill levies rather than have the distribution of those monies go back to the county and then a portion of that go back into the state. It may be possible to take that tax reform off a reduction in the state-wide mill levy and provide that tax relief state-wide.

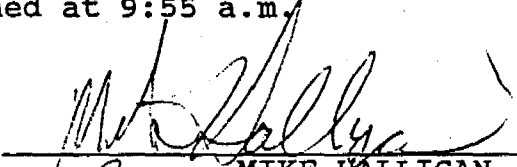
Senator Van Valkenburg asked when those proposals would be ready. Mr. Robinson said he would try to get this information to the Committee by next week. Senator Van Valkenburg said he thought this is an extremely important element in terms of taking executive action on the Sales Tax proposal, if the Administration is looking at some means whereby the school equalization problem can be addressed by virtue of applying sales tax revenue towards the foundation program. Senator Van Valkenburg said he did not think the Committee could take substantive executive action until

the Committee could see the possible interaction of a school equalization proposal and how the MACO property tax reform might work into this.

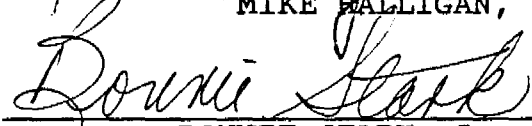
There was no executive action taken on SB 235 or on SB 283. Senator Halligan said during the meeting on February 18, there will be focus on the exemptions and fiscal impact, and whether the Committee is interested in recommending amendments to the sales tax bill to grant further exemptions.

ADJOURNMENT

Adjournment: The meeting adjourned at 9:55 a.m.



MIKE HALLIGAN, Chair



BONNIE STARK, Secretary

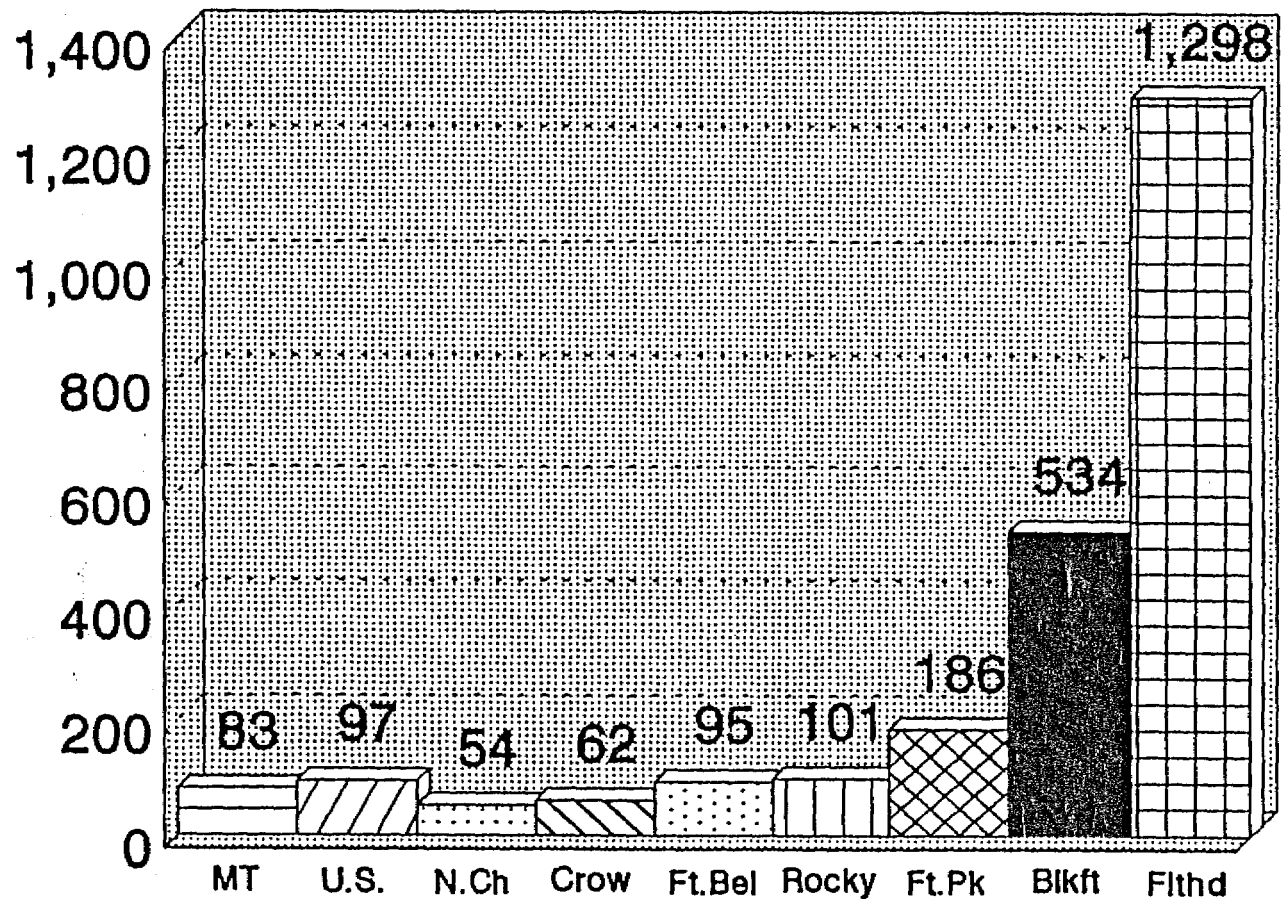
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Cigarette Sales Comparison

U.S. - Montana - Reservation

Total Population Per Capita Consumption (year 1992 thru Nov.)

	Montana
	(799,065)
	U.S. (national)
	(256,410,000)
	N. Cheyenne
	(3,542)
	Crow
	(4,724)
	Fort Belknap
	(2,338)
	Rocky Boy
	(1,882)
	Fort Peck
	(5,782)
	Blackfeet
	(7,025)
	Flathead
	(5,130)



Amounts are in packs of cigarettes
 Amounts in () are population numbers
 Population data from 1990 census

Montana Reservation- Exempt Cigarette Sales

1990

1991

1992

1993 Quotas

Rocky Boy	15,553	17,469	14,989	18,500
Crow	38,038	34,983	29,372	27,000
N.Cheyenne	15,553	17,469	14,989	34,300
Ft.Peck	114,937	111,862	107,724	60,000
Blackfeet	230,862	130,202	375,194	
Flathead	2,355,414	2,130,452	665,896	
Ft.Belknap	21,027	23,031	22,137	

Totals

2,831,027

2,691,600

1,234,438

112,800

Amounts are in Cartons - (1992 Jan -Nov)

Montana Cigarette Sales

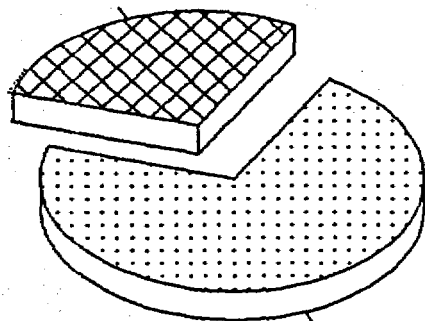
Percent of Total Sales

EXHIBIT 1

DATE 2-17-93

HL HB-283

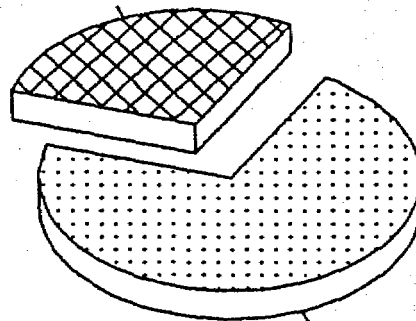
Exempt Sales
29%



Taxable Sales
71%

1990

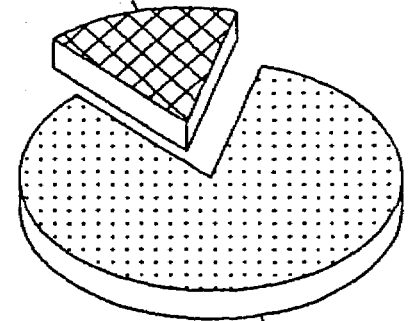
Exempt Sales
29%



Taxable Sales
71%

1991

Exempt Sales
16%



Taxable Sales
84%

1992

1992 Sales are for Jan thru Nov
Sales are in Cartons

	1990	1991	1992
Exempt Sales	2,831,000	2,691,600	1,234,400
Taxable Sales	7,022,900	6,716,100	6,289,100
Total Sales	9,853,900	9,407,700	7,523,600

Cigarette Sales

Comparing Allocation for Enrolled Members With Montana & Nat'l Per Capita Consumption

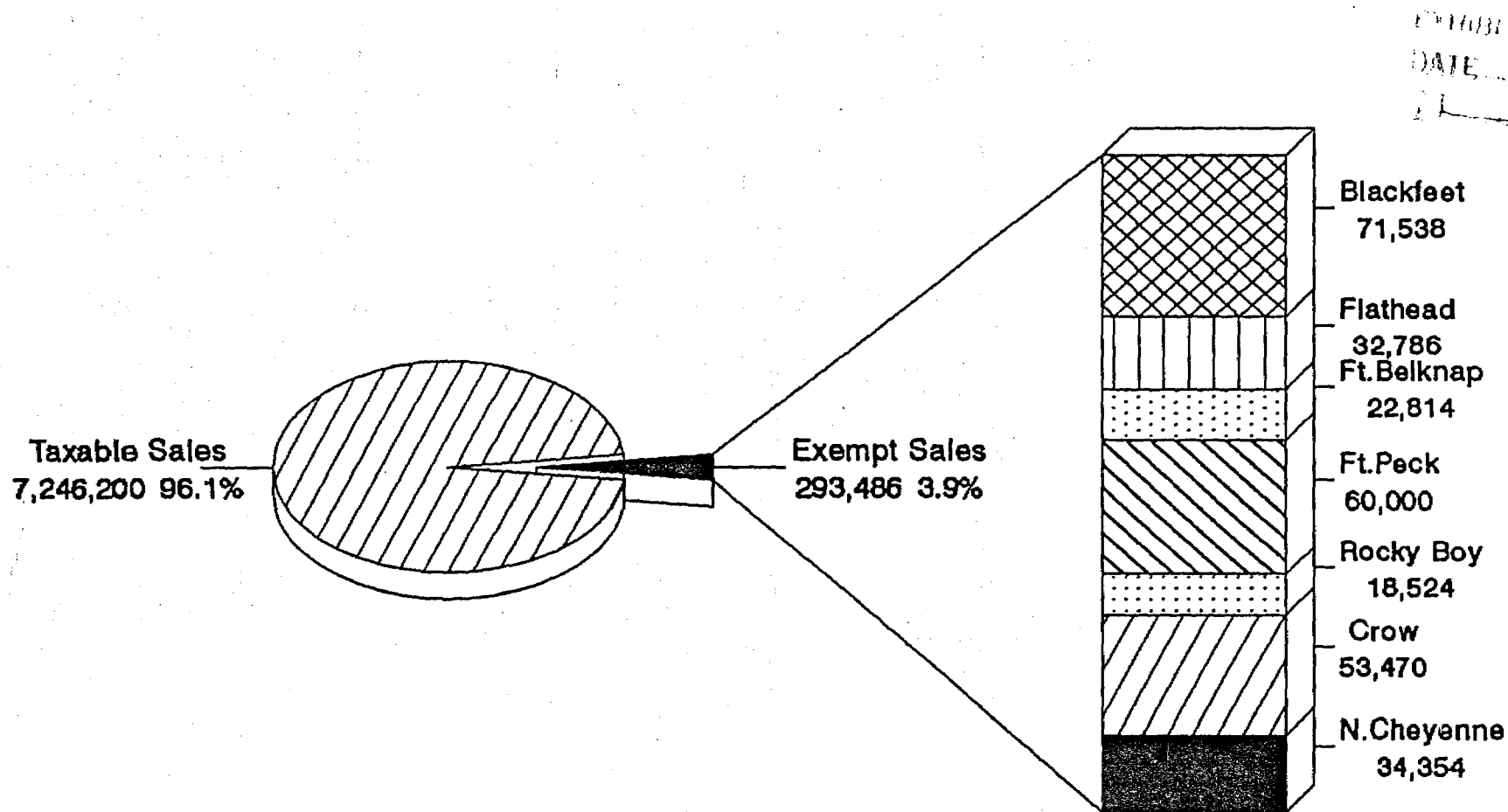
Signed Agreements with the State of Montana			
	Packs Quota	Enrolled Members	Enrolled Per Capita Quota
Northern Cheyenne	343,540	4,138	83
Crow	534,700	6,367	84
Rocky Boy	185,240	1,858	100
Ft Peck	600,000	5,312	113
Montana	Per Capita consumption per data from Tobacco Institute		83
U.S. (National)	Per Capita consumption per data from Tobacco Institute		97

No Agreements with the State of Montana			
Allocations under HB 283			
	Enrolled Members	U.S. Per Capita Consumption	Quota Packs
Ft Belknap	2,352	97	228,144
Flathead	3,380	97	327,860
Blackfeet	7,406	97	715,382

Exempt Cigarette Sales

As sales should be under quota agreements

Estimated Sales 7,539,686



Amounts are in cartons

DATE 2-17-93

SENATE COMMITTEE ON Taxation

BILLS BEING HEARD TODAY: SB 325 Buck HB 283 Elliott
HB 327 Mc Caffrey

Name

Representing

Bill
No.

Check One

Support Oppose

MARGARET HALL	Joey's 664 Stop CSKT			
Randy Walton	Tina Marie's convergence store	HB 283		X
JAMES WEBER	CONF SALISH + KOOTENAI TRIBE	HB 283		X
Bryan Hall	Joe's JIFFY STOP	HB 283		X
Donna Mason	City of Helena	HB 327	X	
Bill Stevens	114700 Nist Ave	HB 283	X	
Paul Watson	DOA	SB 325		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Analysis of the MACo Tax Reform Proposal : Impact to Montana's Property Tax System

*A Report to the Revenue Oversight Committee
of the Montana Legislature*

September 25, 1992

Prepared by:

Brad Simshaw
Office of Research and Information
Montana Department of Revenue
Helena, Montana

MACo Tax Reform Proposal

This tax reform package proposed by MACo is a comprehensive tax reform proposal. It contains major changes to the property tax system in Montana. The result is significant property tax reduction and shifting of the property tax base. To offset the reduction in property tax collections, the proposal includes revenue replacement options. While this report lists the revenue replacement options, the emphasis of the report is on the impact of the proposal to the current property tax system.

Major Points of the Proposal

Property Tax Changes:

●) All Property Taxed at 100% of Market Value

The tax rate for all property would be 100% of market value. Special exceptions to this would be agricultural land and net proceeds of mines. Agricultural land would be taxed at 100% of productive capacity of the land.

●) Homestead Relief for Homeowners

A homestead relief program would exempt from taxation 65% of the first \$50,000 of the market value of owner occupied, single family residences and mobile homes.

●) Eliminate Local Permissive School Levies

The proposal retains the 40 mill statewide equalization levy and the 55 mill school foundation levy but eliminates local permissive school mills. A narrow permissive levy authority for programs unique to a district (subject to voter approval) is allowed.

Revenue Replacement Options:

Option A) Initiate Revenue Increases from Existing Sources

- | | |
|---|--|
| — Cap deduction for federal income taxes paid. | — Increase the coal severance tax rate. |
| — Eliminate income tax indexing. | — Reinstate net and gross proceeds taxes. |
| — Eliminate income tax exemption for retirement income. | — Reinstate business inventory tax. |
| — A surcharge on individual and corporate income tax. | — Return to pre-1989 business equipment tax rates. |

Option B) Establish an Entirely New Revenue Source

- Enact a 4% tax on the sale of goods and services.
- Any other revenue source the legislature may determine to be appropriate.

Methodology of Analysis

This report summarizes the estimated impact of the proposal to the current property tax system in Montana.

-) All taxable value and taxes paid figures are based on tax year 1991 property values and mill levies.
-) Taxes paid figures are taxes paid for state, county, school, and city/town purposes. The figures do not include taxes paid for miscellaneous and special improvement districts. (Inclusion of miscellaneous and special improvement districts in the analysis would not change the big picture of the proposal).
-) It is assumed that property tax revenue of taxing jurisdictions (except for local school permissive levies) would remain at tax year 1991 levels.
-) The analysis is based on the Report of MACo Taxation and Finance Committee Tax Proposal and Analysis, June 1992.
-) The analysis estimates the impact of the proposal to property groups. Property is grouped as following:

Residential

- Residential Land and Improvements
- Farmstead Land and Improvements
- Mobile Homes

Business Equipment

- Manufacturing and Mining Machinery
- Furniture and Fixtures
- Vehicles
- Ag Implements
- Oil and Gas Field Equipment
- Broadcasting Equipment
- Air and Water Pollution Control Equipment
- Aluminum Electrolytic Equipment
- All Other Business Equipment

Commercial Real

- Commercial Land and Improvements
- Industrial Land and Improvements

Utilities

- Gas and Electric Companies
- Telecommunications Companies
- Pipelines
- Rural Co-ops

Proceeds

- Net Proceeds of Miscellaneous Mines
- Gross Proceeds of Metal Mines

Estimated Impacts to the Property Tax System

The proposal impacts the property tax system in two major areas:

●) Over \$185,000,000 in Property Tax Reduction

This is the most obvious impact of the proposal. The reduction is the result of eliminating local permissive school levies. The \$185 Million in property tax reduction represents 1/3 of current property taxes collected for state, county, school, and city/town purposes.

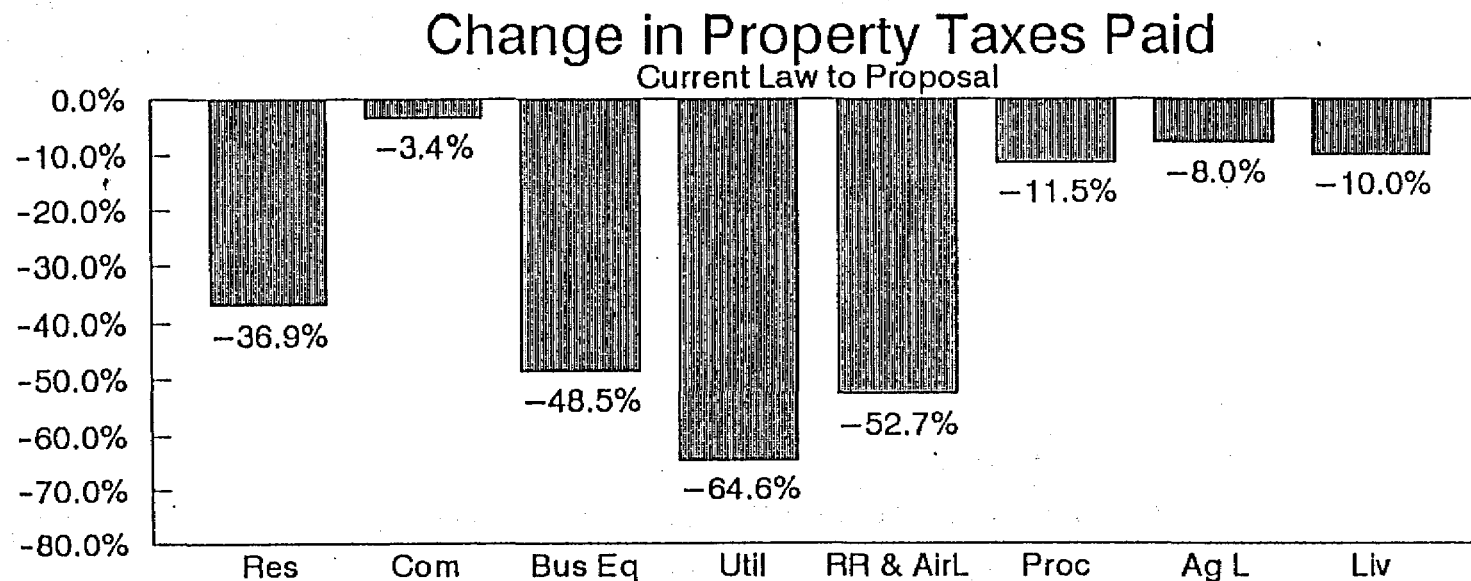
●) Significant Shifting of the Property Tax Base

This is the most important impact of the proposal. It is important for two reasons;

- 1) The shift in the tax base will determine the distribution of the \$185,000,000 in property tax reduction. Overall, all property groups will pay fewer property tax dollars under the proposal. But some property groups will see larger savings than others. Largest savings go to utilities (64% decrease in property taxes paid) and railroads (53% decrease). Smallest savings go to commercial real property (3% decrease).
- 2) The shift in the tax base will determine the burden of future property tax collections. The tax burden of some property groups will increase, while others will realize a decrease. The commercial real property tax burden increases from the current 14.5% share to a 22.2% share of the total property tax burden. Conversely, the burden for utilities decreases from a current 20.4% share to 11.4% share of the total property tax burden.

Change in Property Taxes Paid Current Law vs. Proposal

Property Group	Property Taxes Paid			
	Current	Proposal	Change	Percent Change
Residential	183,672,331	115,979,835	(67,692,496)	-36.9%
Commercial Real	73,593,652	71,092,087	(2,501,565)	-3.4%
Business Equip.	73,858,459	38,059,296	(35,799,163)	-48.5%
Utilities	103,112,627	36,547,517	(66,565,110)	-64.6%
Railroads & Airlines	15,960,941	7,555,769	(8,405,172)	-52.7%
Proceeds	6,141,941	5,434,184	(707,757)	-11.5%
Ag Land	42,124,912	38,737,649	(3,387,263)	-8.0%
Livestock	7,681,615	6,912,732	(768,883)	-10.0%
Statewide Total	506,146,478	320,319,069	(185,827,409)	-36.7%



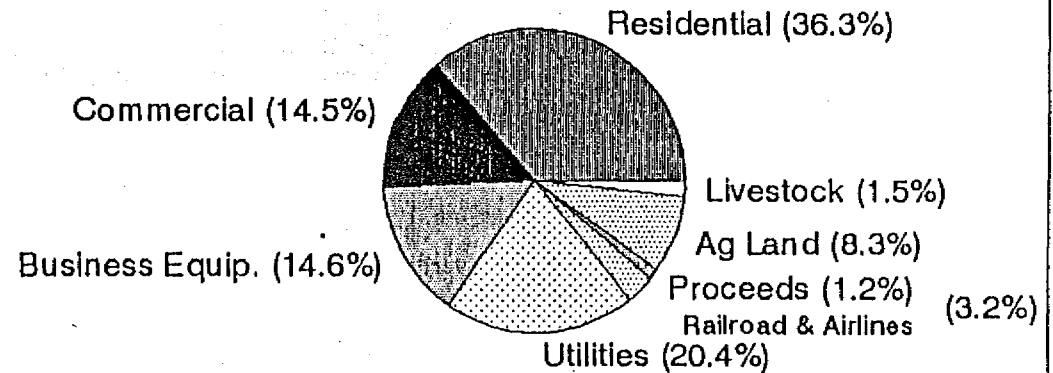
Comparison of Share of Total Property Tax Dollars Paid

Distribution of Tax Liability by Property Type

Property Group

Current		
Property Group	Property Tax Paid	Share
Residential	183,672,331	36.3%
Commercial Real	73,593,652	14.5%
Business Equip.	73,858,459	14.6%
Utilities	103,112,627	20.4%
Railroads & Airlines	15,960,941	3.2%
Proceeds	6,141,941	1.2%
Ag Land	42,124,912	8.3%
Livestock	7,681,615	1.5%
Statewide Total	506,146,478	100.0%

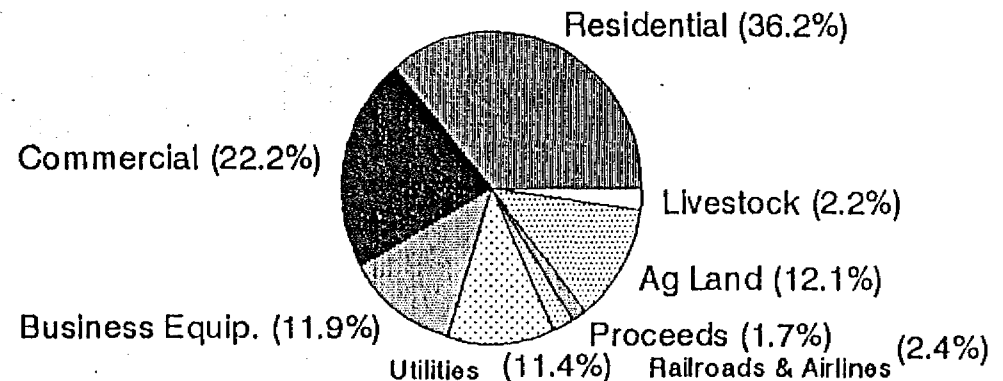
Current Law



Property Group

Proposal		
Property Group	Property Tax Paid	Share
Residential	115,979,835	36.2%
Commercial Real	71,092,087	22.2%
Business Equip.	38,059,296	11.9%
Utilities	36,547,517	11.4%
Railroads & Airlines	7,555,769	2.4%
Proceeds	5,434,184	1.7%
Ag Land	38,737,649	12.1%
Livestock	6,912,732	2.2%
Statewide Total	320,319,069	100.0%

MACO Proposal



MACO Property Tax Proposal

Impact to Tax Revenue Paid by Property Class

Tax Year 1992 Classes	Estimated Current Revenue	Estimated Proposed Revenue	Change in Property Tax	Percent Change in Property Tax
1 Net Proceeds	2,189,354	1,052,895	(1,136,459)	-51.9%
2 Gross Proceeds	3,952,586	4,381,288	428,702	10.8%
3 Ag Land	39,990,912	36,960,043	(3,030,870)	-7.6%
4 Residential Real	161,293,552	98,790,067	(62,503,485)	-38.8%
4 Mobile Homes	5,137,426	3,104,011	(2,033,415)	-39.6%
4 Commercial Real	73,520,664	70,986,082	(2,534,583)	-3.4%
5 Co-ops, Poll. Control	6,189,763	8,197,564	2,007,801	32.4%
6 Livestock	8,516,398	7,770,190	(746,208)	-8.8%
7 Independent Teleph.	268,146	116,932	(151,213)	-56.4%
8 Business Equipment	69,776,374	32,569,257	(37,207,117)	-53.3%
9 Utilities	99,936,314	32,912,512	(67,023,803)	-67.1%
10 Timber Land	2,137,880	1,778,080	(359,799)	-16.8%
11 Farmsteads	17,276,165	14,144,377	(3,131,788)	-18.1%
12 Railroads & Airlines	15,960,941	7,555,769	(8,405,172)	-52.7%
Statewide Total	506,146,478	320,319,069	(185,827,409)	-36.7%

Impact to Tax Revenue Paid by Property Group

Property Group	Estimated Current Revenue	Estimated Proposed Revenue	Change in Property Tax	Percent Change in Property Tax
Residential	183,672,331	115,979,835	(67,692,496)	-36.9%
Commercial Real	73,593,652	71,092,087	(2,501,565)	-3.4%
Business Equipment	73,858,459	38,059,295	(35,799,163)	-48.5%
Utilities	103,112,627	36,547,517	(66,565,110)	-64.6%
Railroads & Airlines	15,960,941	7,555,769	(8,405,172)	-52.7%
Proceeds	6,141,941	5,434,184	(707,757)	-11.5%
Agricultural Land	42,124,912	38,737,649	(3,387,263)	-8.0%
Livestock	7,681,615	6,912,732	(768,883)	-10.0%
Statewide Total	506,146,478	320,319,069	(185,827,409)	-36.7%

Shift in Property Tax Base Share Current Law vs. Proposal

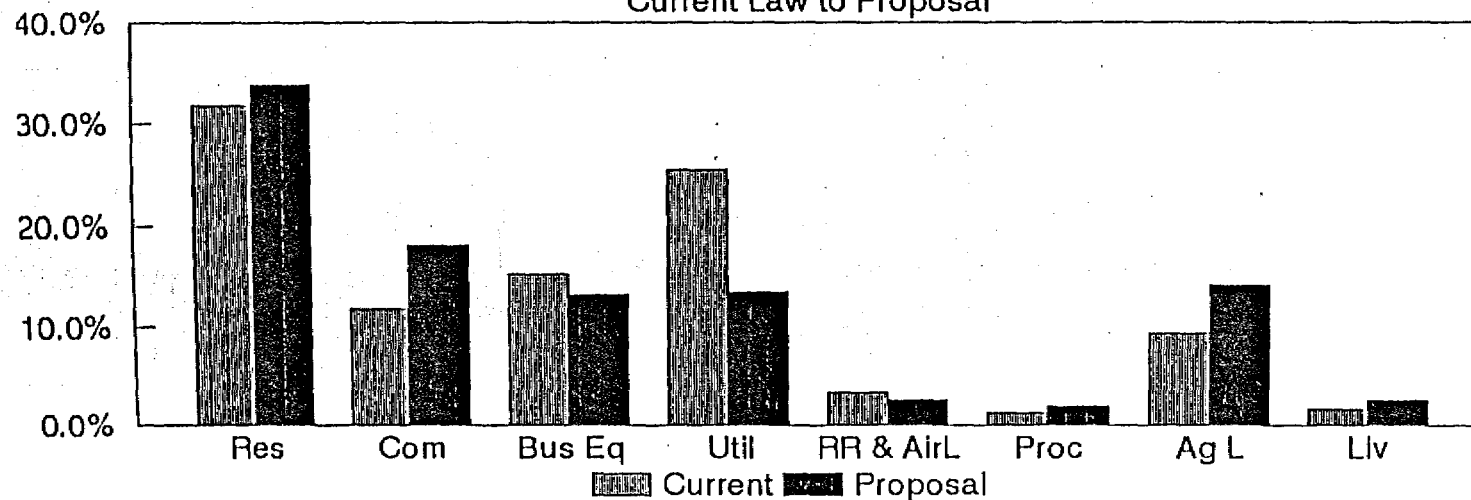
Property Group

Residential
Commercial Real
Business Equip.
Utilities
Railroads & Airlines
Proceeds
Ag Land
Livestock

Statewide Total

Property Tax Base Share			
	Current	Proposal	Percent Change
Residential	31.8%	33.9%	6.4%
Commercial Real	11.8%	18.1%	53.7%
Business Equip.	15.3%	13.3%	-13.0%
Utilities	25.5%	13.5%	-47.1%
Railroads & Airlines	3.4%	2.6%	-21.6%
Proceeds	1.3%	1.9%	46.0%
Ag Land	9.3%	14.2%	52.9%
Livestock	1.7%	2.5%	47.8%
Statewide Total	100.0%	100.0%	

Change in Property Tax Base Share Current Law to Proposal



Shift of Share of Statewide Total Taxable Value Burden Per \$1,000 of Property Taxes Levied

<u>Property Group</u>	<u>Current</u>		<u>Proposal</u>	
	<u>Taxable Values</u>	<u>Share</u>	<u>Taxable Values</u>	<u>Share</u>
Residential	507,754,568	31.8%	9,138,992,976	33.9%
Commercial Real	188,144,068	11.8%	4,893,030,212	18.1%
Business Equip.	243,541,622	15.3%	3,582,902,374	13.3%
Utilities	406,125,673	25.5%	3,637,130,887	13.5%
Railroads & Airlines	53,593,331	3.4%	710,786,886	2.6%
Proceeds	20,549,016	1.3%	507,508,405	1.9%
Ag Land	148,216,272	9.3%	3,832,799,004	14.2%
Livestock	27,296,910	1.7%	682,422,746	2.5%
Statewide Total	1,595,221,460	100.0%	26,985,573,490	100.0%

<u>Burden for \$1,000 of Property Taxes Levied</u>				
<u>Property Group</u>	<u>Current</u>	<u>Proposal</u>	<u>Change</u>	<u>% Change</u>
Residential	\$318	\$339	\$20	6.4%
Commercial Real	118	181	\$63	53.7%
Business Equip.	153	133	(\$20)	-13.0%
Utilities	255	135	(\$120)	-47.1%
Railroads & Airlines	34	26	(\$7)	-21.6%
Proceeds	13	19	\$6	46.0%
Ag Land	93	142	\$49	52.9%
Livestock	17	25	\$8	47.8%
Statewide Total	\$1,000	\$1,000	\$0	

MACO Property Tax Proposal

Share of Statewide Property Tax Base

Tax Year 1992 Classes	Current		Proposed		Change in Tax Base Share
	Taxable Value	Percent of Statewide Total	Taxable Value	Percent of Statewide Total	
1 Net Proceeds	8,318,381	0.5%	99,820,572	0.4%	-29.1%
2 Gross Proceeds	12,230,635	0.8%	407,687,833	1.5%	97.0%
3 Ag Land	141,558,901	8.9%	3,666,104,620	13.6%	53.1%
4 Residential Real	433,587,219	27.2%	7,484,951,356	27.7%	2.0%
4 Mobile Homes	15,274,132	1.0%	262,677,583	1.0%	1.7%
4 Commercial Real	187,850,983	11.8%	4,881,794,018	18.1%	53.6%
5 Co-ops, Poll. Control	27,333,101	1.7%	911,103,372	3.4%	97.0%
6 Livestock	29,705,017	1.9%	755,402,522	2.8%	50.3%
7 Independent Teleph.	885,909	0.1%	11,073,863	0.0%	-26.1%
8 Business Equipment	223,882,855	14.0%	2,936,180,232	10.9%	-22.5%
9 Utilities	395,328,590	24.8%	3,294,404,919	12.2%	-50.7%
10 Timber Land	6,669,376	0.4%	166,734,400	0.6%	47.8%
11 Farmsteads	59,003,031	3.7%	1,396,851,314	5.2%	39.9%
12 Railroads & Airlines	53,593,331	3.4%	710,786,886	2.6%	-21.6%
Statewide Total	1,595,221,460	100.0%	26,985,573,491	100.0%	

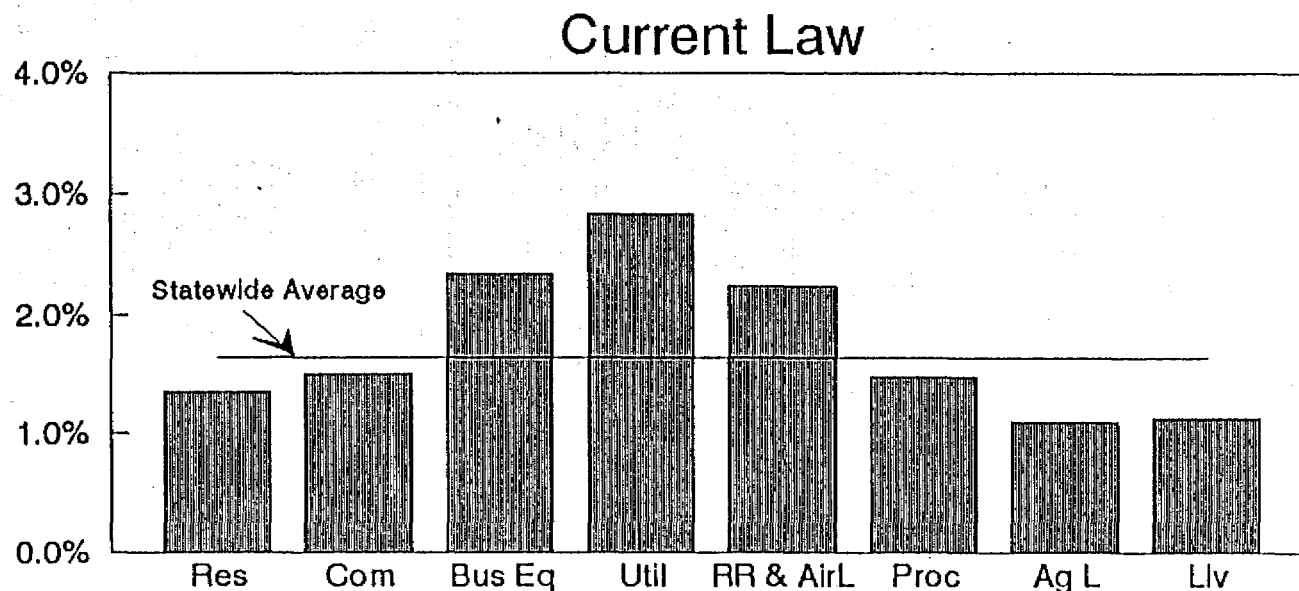
Share of Statewide Property Tax Base

Property Group	Current		Proposed		Change in Tax Base Share
	Taxable Value	Percent of Statewide Total	Taxable Value	Percent of Statewide Total	
Residential	507,754,568	31.8%	9,138,992,976	33.9%	6.4%
Commercial Real	188,144,068	11.8%	4,893,030,212	18.1%	53.7%
Business Equipment	243,541,622	15.3%	3,582,902,375	13.3%	-13.0%
Utilities	406,125,673	25.5%	3,637,130,887	13.5%	-47.1%
Railroads & Airlines	53,593,331	3.4%	710,786,886	2.6%	-21.6%
Proceeds	20,549,016	1.3%	507,508,405	1.9%	46.0%
Agricultural Land	148,216,272	9.3%	3,832,799,004	14.2%	52.9%
Livestock	27,296,910	1.7%	682,422,746	2.5%	47.8%
Statewide Total	1,595,221,460	100.0%	26,985,573,491	100.0%	

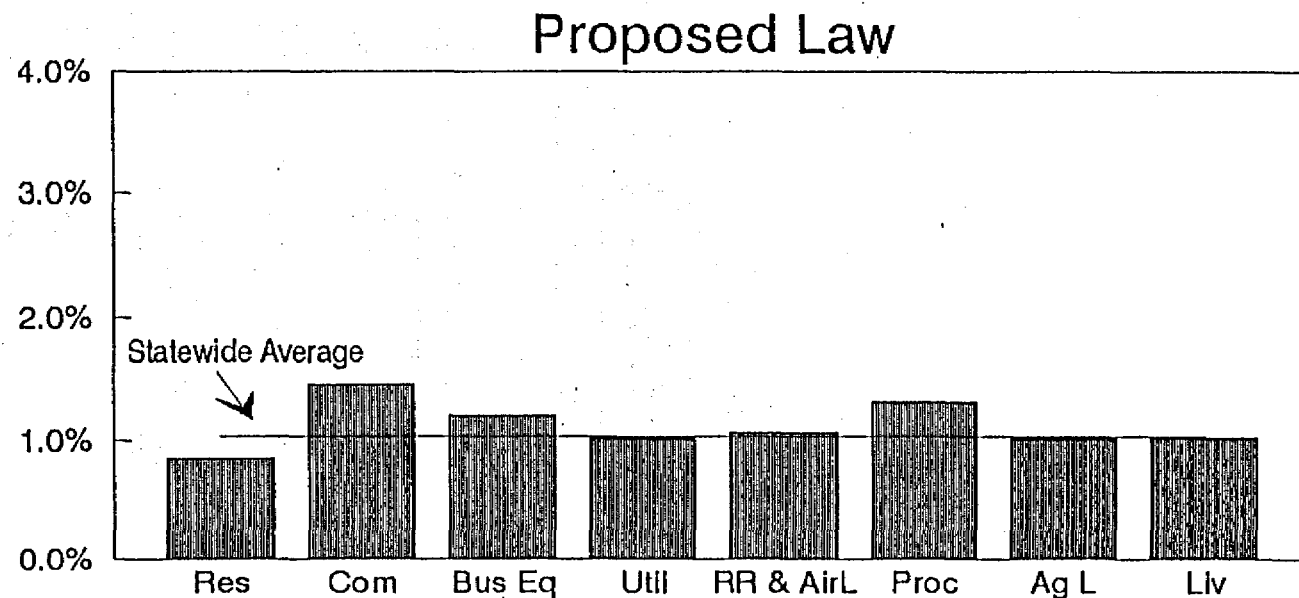
Comparison of Effective Tax Rate (Taxes Paid/ Assessed Value)

Current Law vs. Proposal

	Current
	Effective Tax Rate
Residential	1.35%
Commercial Real	1.50%
Business Equip.	2.34%
Utilities	2.84%
Railroads & Airlines	2.25%
Proceeds	1.48%
Ag Land	1.10%
Livestock	1.14%
Statewide Avg	1.63%



	Proposal
	Effective Tax Rate
Residential	0.85%
Commercial Real	1.45%
Business Equip.	1.21%
Utilities	1.01%
Railroads & Airlines	1.06%
Proceeds	1.31%
Ag Land	1.01%
Livestock	1.02%
Statewide Avg	1.03%



Impact to Mill Levies

	Current	Proposed	Difference
Education			
– Universities	6.000	0.355	–5.645
– State Equalization Levy	40.000	2.365	–37.635
– County Equalization Levies	55.000	3.250	–51.750
– Local Permissive Levies *	116.490	0.000	–116.490
County Government **	70.813	4.185	–66.628
City/Town Government **	98.633	5.698	–92.935
TOTAL	386.935	15.853	–371.082

* The mill levy value listed is a statewide average of local permissive levies. The MACO proposal allows for a narrow permissive levy authority for programs unique to a district tied to a vote of the people.

** The mill levy values listed are statewide averages.

Impact to Property Tax Revenues

	Current	Proposed	Difference
Education			
– Universities	9,571,329	9,571,329	0
– State Equalization Levy	63,808,858	63,808,858	0
– County Equalization Levies	87,737,180	87,737,180	0
– Local Permissive Levies *	185,827,410	0	(185,827,410)
County Government **	112,961,669	112,961,669	0
City/Town Government **	46,290,678	46,290,678	0
	506,197,124	320,369,714	(185,827,410)

* The mill levy value listed is a statewide average of local permissive levies. The MACO proposal allows for a narrow permissive levy authority for programs unique to a district tied to a vote of the people.

** The mill levy values listed are statewide averages.

MACO Property Tax Proposal (SB 283)

Comparison of Total County Property Tax Revenues

(Taxes Levied For State, County, Schools, and City/Town Purposes)

County	County Total Property Tax Revenue			
	Current	SB 283	Dollar Difference	Percent Difference
Beaverhead	5,154,118	3,387,161	(1,766,956)	-34.3%
Big Horn	5,819,489	4,177,042	(1,642,447)	-28.2%
Blaine	3,852,036	2,759,706	(1,092,330)	-28.4%
Broadwater	3,178,448	2,331,934	(846,514)	-26.6%
Carbon	5,524,445	3,479,574	(2,044,871)	-37.0%
Carter	2,131,029	1,527,905	(603,125)	-28.3%
Cascade	38,275,291	23,773,478	(14,501,813)	-37.9%
Chouteau	7,998,092	6,047,055	(1,951,037)	-24.4%
Custer	6,441,996	3,648,103	(2,793,893)	-43.4%
Daniels	2,396,890	1,573,879	(823,011)	-34.3%
Dawson	7,147,371	4,134,963	(3,012,408)	-42.1%
Deer Lodge	4,001,982	2,384,115	(1,617,867)	-40.4%
Fallon	2,014,864	1,389,460	(625,404)	-31.0%
Fergus	7,826,095	4,969,725	(2,856,370)	-36.5%
Flathead	38,137,702	24,908,942	(13,228,760)	-34.7%
Gallatin	27,340,278	17,624,294	(9,715,985)	-35.5%
Garfield	1,511,710	1,348,001	(163,710)	-10.8%
Glacier	4,903,428	3,404,647	(1,498,781)	-30.6%
Golden Valley	1,270,099	768,173	(501,926)	-39.5%
Granite	2,344,931	1,463,936	(880,995)	-37.6%
Hill	8,998,410	6,419,244	(2,579,166)	-28.7%
Jefferson	6,723,808	4,132,398	(2,591,410)	-38.5%
Judith Basin	2,606,101	1,862,791	(743,310)	-28.5%
Lake	9,245,524	6,452,383	(2,793,142)	-30.2%
Lewis And Clark	26,120,586	15,320,752	(10,799,834)	-41.3%
Liberty	2,808,717	2,008,667	(800,050)	-28.5%
Lincoln	8,938,517	5,024,045	(3,914,472)	-43.8%
Madison	5,011,899	3,726,287	(1,285,612)	-25.7%
Mccone	2,565,113	2,046,958	(518,155)	-20.2%
Meagher	2,021,070	1,424,336	(596,734)	-29.5%
Mineral	2,901,070	1,455,657	(1,445,413)	-49.8%
Missoula	51,890,429	31,289,911	(20,600,517)	-39.7%
Musselshell	1,643,588	1,342,032	(301,555)	-18.3%
Park	7,221,324	4,837,433	(2,383,891)	-33.0%
Petroleum	559,623	411,077	(148,545)	-26.5%
Phillips	4,426,147	3,172,960	(1,253,187)	-28.3%
Pondera	4,700,165	3,223,109	(1,477,055)	-31.4%
Powder River	2,031,020	1,543,215	(487,804)	-24.0%
Powell	4,162,371	2,221,452	(1,940,919)	-46.6%
Prairie	1,208,842	1,008,173	(200,670)	-16.6%
Ravalli	9,788,391	6,264,693	(3,523,698)	-36.0%
Richland	5,646,545	4,143,311	(1,503,235)	-26.6%
Roosevelt	6,232,490	3,766,795	(2,465,695)	-39.6%
Rosebud	24,603,063	14,036,954	(10,566,109)	-42.9%
Sanders	6,551,347	3,683,844	(2,867,503)	-43.8%
Sheridan	3,181,788	2,163,192	(1,018,596)	-32.0%
Silver Bow	20,922,604	11,257,657	(9,664,946)	-46.2%
Stillwater	5,273,804	3,680,668	(1,593,136)	-30.2%
Sweet Grass	2,612,289	1,728,175	(884,114)	-33.8%
Teton	4,962,893	3,464,401	(1,498,492)	-30.2%
Toole	4,547,828	3,686,955	(860,873)	-18.9%
Treasure	1,331,906	842,150	(489,756)	-36.8%
Valley	8,690,529	4,592,227	(4,098,301)	-47.2%
Wheatland	2,252,350	1,389,604	(862,746)	-38.3%
Wibaux	887,615	799,971	(87,643)	-9.9%
Yellowstone	65,606,419	40,798,162	(24,808,257)	-37.8%
Statewide	506,146,477	320,323,733	(185,822,744)	-36.7%

Compiled by the Office of Research and Information, Montana Department of Revenue.
Based on Tax Year 1991 Taxable Values and Tax Year 1991 Mill Levies.

17-Feb-93

MACO Property Tax Proposal (SB 283)

Comparison of Total County Property Tax Revenues

(Taxes Levied For State, County, Schools, and City/Town Purposes)

County	County Total Property Tax Revenue				
	Current		SB 283		Percent Change of Share
	Revenue	Share	Revenue	Share	
Beaverhead	5,154,118	1.02%	3,387,161	1.06%	3.8%
Big Horn	5,819,489	1.15%	4,177,042	1.30%	13.4%
Blaine	3,852,036	0.76%	2,759,706	0.86%	13.2%
Broadwater	3,178,448	0.63%	2,331,934	0.73%	15.9%
Carbon	5,524,445	1.09%	3,479,574	1.09%	-0.5%
Carter	2,131,029	0.42%	1,527,905	0.48%	13.3%
Cascade	38,275,291	7.56%	23,773,478	7.42%	-1.9%
Chouteau	7,998,092	1.58%	6,047,055	1.89%	19.5%
Custer	6,441,996	1.27%	3,648,103	1.14%	-10.5%
Daniels	2,396,890	0.47%	1,573,879	0.49%	3.8%
Dawson	7,147,371	1.41%	4,134,963	1.29%	-8.6%
Deer Lodge	4,001,982	0.79%	2,384,115	0.74%	-5.9%
Fallon	2,014,864	0.40%	1,389,460	0.43%	9.0%
Fergus	7,826,095	1.55%	4,969,725	1.55%	0.3%
Flathead	38,137,702	7.53%	24,908,942	7.78%	3.2%
Gallatin	27,340,278	5.40%	17,624,294	5.50%	1.9%
Garfield	1,511,710	0.30%	1,348,001	0.42%	40.9%
Glacier	4,903,428	0.97%	3,404,647	1.06%	9.7%
Golden Valley	1,270,099	0.25%	768,173	0.24%	-4.4%
Granite	2,344,931	0.46%	1,463,936	0.46%	-1.4%
Hill	8,998,410	1.78%	6,419,244	2.00%	12.7%
Jefferson	6,723,808	1.33%	4,132,398	1.29%	-2.9%
Judith Basin	2,606,101	0.51%	1,862,791	0.58%	12.9%
Lake	9,245,524	1.83%	6,452,383	2.01%	10.3%
Lewis And Clark	26,120,586	5.16%	15,320,752	4.78%	-7.3%
Liberty	2,808,717	0.55%	2,008,667	0.63%	13.0%
Lincoln	8,938,517	1.77%	5,024,045	1.57%	-11.2%
Madison	5,011,899	0.99%	3,726,287	1.16%	17.5%
McCone	2,565,113	0.51%	2,046,958	0.64%	26.1%
Meagher	2,021,070	0.40%	1,424,336	0.44%	11.4%
Mineral	2,901,070	0.57%	1,455,657	0.45%	-20.7%
Missoula	51,890,429	10.25%	31,289,911	9.77%	-4.7%
Musselshell	1,643,588	0.32%	1,342,032	0.42%	29.0%
Park	7,221,324	1.43%	4,837,433	1.51%	5.8%
Petroleum	559,623	0.11%	411,077	0.13%	16.1%
Phillips	4,426,147	0.87%	3,172,960	0.99%	13.3%
Pondera	4,700,165	0.93%	3,223,109	1.01%	8.4%
Powder River	2,031,020	0.40%	1,543,215	0.48%	20.1%
Powell	4,162,371	0.82%	2,221,452	0.69%	-15.7%
Prairie	1,208,842	0.24%	1,008,173	0.31%	31.8%
Ravalli	9,788,391	1.93%	6,264,693	1.96%	1.1%
Richland	5,646,545	1.12%	4,143,311	1.29%	15.9%
Roosevelt	6,232,490	1.23%	3,766,795	1.18%	-4.5%
Rosebud	24,603,063	4.86%	14,036,954	4.38%	-9.8%
Sanders	6,551,347	1.29%	3,683,844	1.15%	-11.1%
Sheridan	3,181,788	0.63%	2,163,192	0.68%	7.4%
Silver Bow	20,922,604	4.13%	11,257,657	3.51%	-15.0%
Stillwater	5,273,804	1.04%	3,680,668	1.15%	10.3%
Sweet Grass	2,612,289	0.52%	1,728,175	0.54%	4.5%
Teton	4,962,893	0.98%	3,464,401	1.08%	10.3%
Toole	4,547,828	0.90%	3,686,955	1.15%	28.1%
Treasure	1,331,906	0.26%	842,150	0.26%	-0.1%
Valley	8,690,529	1.72%	4,592,227	1.43%	-16.5%
Wheatland	2,252,350	0.44%	1,389,604	0.43%	-2.5%
Wibaux	887,615	0.18%	799,971	0.25%	42.4%
Yellowstone	65,606,419	12.96%	40,798,162	12.74%	-1.7%
Statewide	506,146,477	100.00%	320,323,733	100.00%	

MACO Property Tax Proposal (SB 283)

Comparison of Total County Property Tax Revenues

(Taxes Levied For State, County, Schools, and City/Town Purposes)

County Total Property Tax Revenue					
County	Current		SB 283		Percent Change of Share
	Revenue	Share	Revenue	Share	
Mineral	2,901,070	0.57%	1,455,657	0.45%	-20.7%
Valley	8,690,529	1.72%	4,592,227	1.43%	-16.5%
Powell	4,162,371	0.82%	2,221,452	0.69%	-15.7%
Silver Bow	20,922,604	4.13%	11,257,657	3.51%	-15.0%
Lincoln	8,938,517	1.77%	5,024,045	1.57%	-11.2%
Sanders	6,551,347	1.29%	3,683,844	1.15%	-11.1%
Custer	6,441,996	1.27%	3,648,103	1.14%	-10.5%
Rosebud	24,603,063	4.86%	14,036,954	4.38%	-9.8%
Dawson	7,147,371	1.41%	4,134,963	1.29%	-8.6%
Lewis And Clark	26,120,586	5.16%	15,320,752	4.78%	-7.3%
Deer Lodge	4,001,982	0.79%	2,384,115	0.74%	-5.9%
Missoula	51,890,429	10.25%	31,289,911	9.77%	-4.7%
Roosevelt	6,232,490	1.23%	3,766,795	1.18%	-4.5%
Golden Valley	1,270,099	0.25%	768,173	0.24%	-4.4%
Jefferson	6,723,808	1.33%	4,132,398	1.29%	-2.9%
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Granite	2,344,931	0.46%	1,463,936	0.46%	-1.4%
Carbon	5,524,445	1.09%	3,479,574	1.09%	-0.5%
Treasure	1,331,906	0.26%	842,150	0.26%	-0.1%
Fergus	7,826,095	1.55%	4,969,725	1.55%	0.3%
Ravalli	9,788,391	1.93%	6,264,693	1.96%	1.1%
Gallatin	27,340,278	5.40%	17,624,294	5.50%	1.9%
Flathead	38,137,702	7.53%	24,908,942	7.78%	3.2%
Daniels	2,396,890	0.47%	1,573,879	0.49%	3.8%
Beaverhead	5,154,118	1.02%	3,387,161	1.06%	3.8%
Sweet Grass	2,612,289	0.52%	1,728,175	0.54%	4.5%
Park	7,221,324	1.43%	4,837,433	1.51%	5.8%
Sheridan	3,181,788	0.63%	2,163,192	0.68%	7.4%
Pondera	4,700,165	0.93%	3,223,109	1.01%	8.4%
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Blaine	3,852,036	0.76%	2,759,706	0.86%	13.2%
Phillips	4,426,147	0.87%	3,172,960	0.99%	13.3%
Carter	2,131,029	0.42%	1,527,905	0.48%	13.3%
Big Horn	5,819,489	1.15%	4,177,042	1.30%	13.4%
Broadwater	3,178,448	0.63%	2,331,934	0.73%	15.9%
Richland	5,646,545	1.12%	4,143,311	1.29%	15.9%
Petroleum	559,623	0.11%	411,077	0.13%	16.1%
Madison	5,011,899	0.99%	3,726,287	1.16%	17.5%
Chouteau	7,998,092	1.58%	6,047,055	1.89%	19.5%
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Wibaux	887,615	0.18%	799,971	0.25%	42.4%
Statewide	506,146,477	100.00%	320,323,733	100.00%	

MOTION/VOTE:

Senator Gage moved for adoption of the amendments on Exhibit No. 8 (sb042901.ajm). The motion CARRIED UNANIMOUSLY on oral vote.

MOTION/VOTE:

Senator Gage moved SB 429 DO PASS AS AMENDED. The motion CARRIED UNANIMOUSLY on oral vote. (651042SC.San)

EXECUTIVE ACTION ON HB 283DISCUSSION:

Senator Stang presented Exhibit 9, which are amendments to HB 283, and Exhibit No. 10, which is updated information on cigarette quotas on Reservations. Senator Stang said the amendments relate to the objections to this bill by the Salish-Kootenai Tribes, and are drafted to address the concerns of both the Tribes and the DOR.

Jeff Miller, Administrator of the Income and Miscellaneous Tax Division, DOR, explained the amendments. Mr. Miller said the DOR has had considerable dialogue with James Weber, Tribal Attorney for the Confederated Salish and Kootenai Tribes on the Flathead Reservation. Mr. Weber proposed a series of amendments that addressed his concerns relative to the operation of HB 283 as introduced. Through those discussions, the DOR has agreed to make changes in the bill as indicated in the amendments. The first amendment is in effect creating a situation of insuring an adequate supply of tax-free cigarettes onto the Reservation, and will do that by changing the formula for calculating the quota amounts to be using a factor of 150% of the National per capita consumption. Currently the National per capita consumption is 97 packs per individual. By going to 150%, it will be 145 packs of cigarettes per individual consumption. In this manner, the DOR is attempting to insure there will be an adequate supply of tax-free cigarettes available on the Reservations. If anything, this is an attempt to err on the side of over-supply. Exhibit No. 10 will illustrate the impact of the per capita distribution.

Senator Harp asked Mr. Miller what is responsible for the large drop in cigarette purchases on the Flathead Reservation between 1991 and 1992. Mr. Miller said the major enforcement action transpiring on that Reservation resulted in this drop in sales.

Senator Eck asked how this would conflict with HB 92. Mr. Miller said the DOR does not see any conflict between the two bills. HB 92 relates to establishing the parameters of how the negotiated agreements would work and encouraging those kinds of negotiated agreements. HB 283 is a very specific mechanical

process of establishing a supply of cigarettes on the various Reservations, and the DOR does not see it as a conflict.

Mr. Miller explained that Amendments 2, 3 and 4 are responsive to the Tribe's concerns that the negotiators at the table ought to have as much latitude as they possibly could have. These amendments will eliminate the requirement that the Tribe's tax system be identical to the state's. It opens the door to the negotiators to say that if the Tribe wants to put in place a lower tax or something like that, and if the DOR can work out a negotiated agreement to cooperatively administer it, so be it. These amendments would eliminate what the Tribe saw as impediments to that kind of situation.

Mr. Miller said Amendment 5 inserts language specifically to address this same concern of the Tribe for some flexibility.

Explaining Amendments 6 and 7, Mr. Miller said the Tribes were asking for standing in the instance of a confiscation or seizure. If there are proceeds from the seizure of unstamped cigarettes, they wanted to have standing in that situation so they could share in it, especially where they assisted the DOR in the enforcement, as was the case in the November enforcement activity on the Flathead Reservation; the Tribal Police were involved in that enforcement activity. The DOR can speak to this only so far as it goes to the State. The DOR has pointed out to the Tribe that in the event there is an issue between the Federal government and the Tribe as to standing, that is between the Tribe and the Federal government. Amendments 6 and 7 are responsive to the Tribe's concerns.

Exhibit No. 8 is important, according to Mr. Miller, because the Salish-Kootenai gave every indication they expected, given a little more time, that they would be able to reach a negotiated agreement. The DOR is interested in reaching negotiated agreements with all of the Tribes as that is the most preferable method in addressing this issue. In the spirit of accommodation, the Tribes were asking for an extension in negotiations to August 15, 1993, with the effective date of this Act, and the DOR said they would be happy to go to October 1, 1993, which is approximately six months from when the Legislature will complete its business, but is a 3-month extension from what was originally written into the bill.

MOTION/VOTE:

Senator Harp moved adoption of the amendments to HB 283.

DISCUSSION:

Senator Towe asked about the quota being extended to 150%, if this is a maximum quota, and said he assumes there is no cooperative agreement with the Salish and Kootenai Tribes yet. Mr. Miller said this is correct. In the absence of a negotiated

agreement, HB 283 will come into play to establish the supply of cigarettes to be distributed on the Reservation. Responding to Senator Towe's questions on the method of handling this, Mr. Miller said the DOR has been closely monitoring the sales from the wholesalers to all businesses in the state, but in particular to smoke shops on Reservations, because they are the only ones in the State authorized to purchase tax-free. With every order, there are documents coming to the Department to indicate the sales, and if the DOR does not have a negotiated agreement, the DOR will be able to look to past history consumption patterns geographically throughout the Reservations. Absent negotiations, if there is an extra supply and the various smoke shops consume 10% of whatever was the consumption pattern, the DOR will assume they can make some reasonable attempt to distribute that quota amount among those smoke shops, based on their past consumption patterns. There will be a reduction in the total supply available, and the DOR will try to distribute proportionately among the smoke shops. The DOR will have a 5-year history in terms of the purchase patterns, and the DOR has implemented negotiated quotas using those kinds of information as a basis.

Mr. Miller said where the DOR has implemented quotas among the four negotiated agreements in place, the past-consumption patterns are something both the DOR and the Tribe looked to in trying to allocate the quotas.

Senator Towe asked about the inter-local agreements, and why this is in HB 283 and not in HB 92. Mr. Miller said a similar bill to this one was rejected last session, and he had not made any attempt to reconcile this bill with HB 92. He thinks HB 283 is compatible with HB 92, but it is specific to the issue of cigarettes.

Senator Towe suggested adding a coordinating instruction to Section 3 of HB 283 that if HB 92 is passed and signed by the Governor, Section 3 will be deleted from HB 283. Senator Towe said one of the reasons he has problems with this bill is that it refers to an adoption of an ordinance, and he knows from personal experience that that can be a problem.

Mr. Miller responded that Section 3 and, in particular, the amended language inserted into the bill, was put there at the request of the Fort Peck Tribe and their counsel who said the negotiated agreement structure presently in place is working but if an attempt is made to modify it, they wanted specific direction and clarification that this law would not in any way impact existing quotas in negotiated agreements thereafter. Mr. Miller thinks Section 3 is important and is not incompatible with HB 92. The DOR, as well as the Tribes who already have negotiated agreements in place, are comfortable with HB 283 with Section 3 as it is written. Mr. Miller would like to see Section 3 stay in the bill.

SUBSTITUTE MOTION:

Senator Yellowtail moved a substitute motion that HB 283 BE TABLED.

DISCUSSION:

Senator Yellowtail said he wants to table this bill because HB 92 and the existing State/Tribal Cooperative Agreements Act provide adequate parameters for negotiations to take place in an orderly and normal fashion between the State and the Salish and Kootenai Confederated Tribes, and the other Tribes who have not yet completed negotiated agreements with the State. A cooperative agreement is about to be consummated between the State and the Confederated Tribe and this Committee should let that process continue. He thinks if Amendment No. 1 is adopted, the 150% figure automatically changes the scene with the other four negotiated agreements in place, and those Tribes should be able to come back and demand that their quotas be upped. Senator Yellowtail feels HB 283 is unnecessary.

Senator Stang spoke against the motion, saying the process isn't working. This bill has been before this Legislature for the past six years. The State has had six years to negotiate an agreement with these Tribes. The State has now given the Tribes another three months in good faith. Senator Stang does not want to give any more time. He fears that if HB 283 is killed, they have an unlimited time to not negotiate, and cigarettes may continue to be illegally sold on the Reservation; he feels it is time to move the process on. It is becoming a real emotional issue with people who sell cigarettes off the Reservation. Senator Stang said the DOR didn't want to put the 150% into the bill; this is a compromise the DOR made because they wanted all enrolled tribal members included, no matter where they lived in the country. Rather than err on the side of shorting the Tribes for those people who may come back to the Reservation to buy cigarettes, the DOR said they would go with 150%. If the other Tribes want to come in and re-negotiate their agreements, they can do so. However, if they are happy with the quotas they have, they may not want to re-negotiate. Those agreements were negotiated at more than what they sold in 1991 and 1992. He thinks HB 283 needs to pass in order to get the negotiation process moving forward.

Senator Gage said it is his opinion that the House will not accept the amendments to HB 283. HB 92 was passed on the premise that the taxes that are assessed by the Tribe will be in the same amount as the taxes assessed by the State of Montana. These amendments will make the taxes collected by the Tribe different from those taxes collected by the State for cigarettes sold on and off the Reservation, and he sees it as a problem.

Senator Harp spoke against the motion to table. He has carried this bill in the past and has heard these same arguments

to give a little more time for negotiations. He understands the frustrations of those people involved in the negotiations. He believes the DOR has gone too far in increasing the quota to 150% and said the tax evasion allowed to occur with this quota is hurting the other taxpayers in the State.

Senator Towe asked if the refund system works. Mr. Miller said it is a workable system which is patterned after what is in place and working in Washington today. The DOR has implemented quotas on two of the four Reservations, and is still negotiating the distribution mechanism on the other two. The requirement is the wholesaler contacts the DOR for pre-approval of the shipment. The DOR keeps track on a diminishing quota. Under HB 283, all cigarettes are stamped so the DOR will now be able to distinguish that they are legal Montana cigarettes. The wholesaler will invoice them to the Reservations tax free and get the rebate refund from the DOR. If they are not pre-approved, there will be no refund. The DOR has had excellent cooperation with the wholesalers, and the process is working well.

VOTE:

The motion to TABLE HB 283 FAILED 6-4 on Roll Call Vote (#1).

DISCUSSION:

Senator Gage asked to segregate the motion to adopt the amendments, and vote separately on Amendment No. 5. Acting Chair Eck ruled that the amendments can be segregated.

MOTION:

Senator Gage moved to segregate and not adopt Amendments Numbered 2, 3, 4, and 5.

DISCUSSION:

Senator Stang said the reason Amendments 2, 3, 4, and 5 were presented is that the Tribes worry about having to impose an identical tax, and the Confederated Salish and Kootenai Tribes are in a unique position that they can't impose a tax on their people without a vote of the Tribe. By forcing them to collect a tax at the same rate as the State imposes, it violates their own Tribal Constitution. These amendments will give them the leeway to go back to their Tribal members and impose the tax at the rate they see fit, and the amendments will be helpful to the Tribe in their negotiations with the State. Senator Stang speaks against the motion on that basis, and in favor of Amendments 2, 3, 4, and 5.

Senator Towe spoke against the motion, and in favor of Amendments 2, 3, 4, and 5.

SUBSTITUTE MOTION:

Senator Stang moved a substitute motion to ADOPT AMENDMENTS No. 2, 3, 4, and 5 on Exhibit No. 9.

DISCUSSION:

Senator Gage pointed out language on Page 4, beginning on Line 11, of HB 283, saying, "The consumer is not required to pay both the state tax and the tribal tax, but shall pay only one tax to the state in an amount equal to the tax paid on cigarettes...." He asked how this would be applied, and if the Tribe would assess a tax different than the State sets and say the consumer would only have to pay the amount assessed by the State. Dave Woodgerd, DOR Legal Counsel, said they looked at that language and they interpret it to only talk about the tax to the State and not the tax to the Tribe. No consumer is required to pay both the State tax and the Tribal tax. In terms of consistency, Mr. Woodgerd said lines 13 and 14 could be stricken from the language. The DOR felt it is okay the way it is now, so that both the State and the Tribe could impose their own tax.

VOTE:

The motion to adopt Amendments 2, 3, 4, and 5 CARRIED on oral vote with Senators Gage and Doherty voting "NO".

MOTION/VOTE:

Senator Stang moved for adoption of Amendments 6, 7, and 8. The motion CARRIED UNANIMOUSLY on oral vote.

DISCUSSION:

Senator Van Valkenburg asked Mr. Miller how important the 150% figure is to the ability to negotiate an agreement with the Confederated Tribe. He is more inclined to say that usage of non-taxable cigarettes should be allowed at 110%. He thinks putting it at 150% makes an inequitable situation for the other four Tribes who have already negotiated agreements. Mr. Miller responded that the four negotiated agreements provide for an attempt to re-negotiate in the event those Tribes would like to change their agreements. With regard to the agreement with the Confederated Salish and Kootenai Tribes, they asked that the DOR calculate the quota by the total enrollment, notwithstanding where those people might live. What the DOR has come to is an accommodation to meet them half way. The residential enrollment on the Flathead Reservation is approximately 3600; their total enrollment is 6700. They wanted an equivalent of a 100% increase, and the DOR said they would make some reasonable accommodation and they agreed to a 150% increase. That figure was a compromise and is one intending to make sure that their membership is not in a situation of having to pay cigarette taxes because of actions of a smoke shop charging the wrong person.

That Tribe is very adamant that it is an issue not of privilege but of right and the DOR is sensitive to that issue. They are trying to accommodate the Tribes by erring on the side of over-supply, that could potentially avoid disputes and litigation.

VOTE:

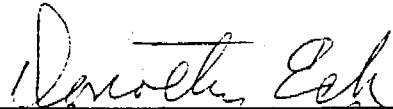
The original motion to adopt the Amendments (No. 1 being the only remaining motion not voted on) CARRIED 7-3 on Roll Call Vote (#2).

MOTION/VOTE:

Senator Stang moved HB 283 BE CONCURRED IN AS AMENDED. The motion CARRIED on oral vote with Senators Gage, Yellowtail and Doherty voting "NO". (651604SC.San) Senator Stang will carry the bill on the Senate floor.

ADJOURNMENT

Adjournment: The meeting adjourned at 10:05 a.m.



DOROTHY ECK, Chair



BONNIE STARK, Secretary

DE/bjs

ROLL CALL

SENATE COMMITTEE TAXATION DATE 3-23-93

NAME	PRESENT	ABSENT	EXCUSED
Sen. Halligan, Chair			✓
Sen. Eck, Vice Chair	✓		
Sen. Brown	✓		
Sen. Doherty	✓		
Sen. Gage	✓		
Sen. Grosfield	✓		
Sen. Harp	✓		
Sen. Stang	✓		
Sen. Towe	✓		
Sen. Van Valkenburg	✓		
Sen. Yellowtail	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 23, 1993

MR. PRESIDENT:

We, your committee on Taxation having had under consideration House Bill No. 283 (first reading copy -- white), respectfully report that House Bill No. 283 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Eck*
Senator Dorothy Eck, Vice-Chair

That such amendments read:

1. Title, line 13.

Strike: "IDENTICAL"

Insert: "SIMILAR"

2. Title, line 17.

Following: "CIGARETTES;"

Insert: "PROVIDING FOR A DISTRIBUTION OF PROCEEDS FROM A SALE OF
PROPERTY SEIZED;"

3. Page 3, line 4.

Following: "means"

Insert: "150% of"

4. Page 3, line 22 through page 4, line 3.

Strike: ":" on page 3, line 22 through "(b)" on page 4, line 3

5. Page 4, line 11.

Following: "tribe."

Insert: "However, the tax rate determined by a tribal government
on a negotiated quota amount need not equal the tax rate
imposed by the state."

6. Page 6, line 23.

Following: "state,"

Insert: "tribal,"

7. Page 7, line 1.

Following: "proceeds"

Insert: ", less an amount that is based on the value of the
property seized on an Indian reservation and that is
allocated to a tribe pursuant to a state-tribal cooperative
agreement,"

8. Page 17, line 15.

Strike: "June"

Insert: "September"

-END-

#1

TAXATION

21B 283

3-23-93

f: de

A.M.

P.M.

YES

NO

Donnie Stark
SECRETARY

SECRETARY

Dorothy Eck, Vice Chair
CHAIR

CHAIR

MOTION: Tabled. Motion Failed 6-4

ROLL CALL VOTE #2

SENATE COMMITTEE

TAXATION

BILL NO.

HB 283

DATE _____

3-23-93

TIME

fid

A.M.

P.M.

NAME _____

YES

NO

[illegible]

Bonnie Stark
SECRETARY

Dorothy Eek. Vice Chair
CHAIR

MOTION: ^{adopt} Amend # 1 Carried 7-3.

Amendments to House Bill 283
Third Reading Copy

SENATE TAXATION

EXHIBIT NO. 9

DATE 3-23-93

BILL NO. HB 283

Executive Session

Prepared by Department of Revenue in response
to Concerns of the Salish-Kootenai
3/22/93

1. Page 3, line 4.
Following: "means"
Insert: "150% of"

2. Page 3, lines 23 through 25.
Strike: lines 23 through 25 in their entirety.

3. Page 4, line 1 through 2.
Strike: lines 1 through 2 in their entirety.

4. Page 4, line 3.
Strike: "(b)"

5. Page 4, line 11.
Following: "tribe."
Insert: "However, the tax rate determined by a tribal government on a negotiated quota amount need not equal the tax rate set by the state."

6. Page 6, line 23.
Following: "state,"
Insert: "tribal,"

7. Page 7, line 1.
Following: "proceeds"
Insert: "less an amount allocated to a tribe pursuant to a state-tribal cooperative agreement for cigarettes seized on an Indian reservation,"

8. Page 17, line 15.
Following: "after"
Strike: "June 30"
Insert: "October 1"

Reason for Amendment: The amendments address concerns raised by the Salish-Kootenai tribes. The first amendment increases the statutory quota of untaxed cigarettes available for purchase on an Indian reservation.

The next four amendments clarifies that tribal governments would not be required to impose an identical tax rate on cigarettes as the tax rate set by the Montana legislature. A tribe imposing a lesser tax rate could still enter into a cooperative agreement to share revenue.

The sixth and seventh amendments allocate to a tribe, a portion of the proceeds when property seized on a reservation is sold at a public auction. However, in many instances the federal government may claim the entire proceeds and neither the state nor a tribe would be entitled to any portion of the proceeds.

The eighth amendment changes the applicability date of this act from June 30, 1993 to October 1, 1993. The later applicability date would allow tribes and the state more time to prepare for the implementation of this act.

EXHIBIT NO. 10
 DATE 3-23-93
 BILL NO. HB 283 *Exc*
Sos

Reservation	1991 (Packs) Purchases	1992 (Packs) Purchases	1993 (Packs) Negotiated Quota	Maximum Allocation / Amended HB 283	Resident Enrollment
Rocky Boy	174,700	163,600	185,000	270,000	1,858
Crow	349,830	324,500	534,700	926,000	6,367
N Cheyenne	210,000	205,800	343,000	602,000	4,138
Ft Peck	1,118,900	1,327,200	600,000	773,000	5,312
Blackfeet	2,547,400	4,156,000	-----	1,078,000	7,406
Flathead	22,210,500	6,962,600	-----	527,000	3,625
Ft Belknap	230,300	244,700	-----	342,000	2,352
	26,900,000	13,400,000		4,518,000	31,058

Total Taxed Sales 1991 67,160,718 Packs As a % of 1991 Sales = a 83% Reduction

Total Taxed Sales 1992 67,540,109 Packs As a % of 1992 Sales = a 66% Reduction